



Fast Track Proposed Regulation Agency Background Document

Agency name	Virginia Board of Accountancy
Virginia Administrative Code (VAC) citation	Repealing Chapter 21 of 18VAC5, adopting a new Chapter 22 of 18VAC5, and adopting new regulations in Chapter 22 of 18VAC5
Regulation title	Virginia Board of Accountancy regulations
Action title	Replacement of the current regulations
Date this document prepared	December 21, 2009

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

As a result of the comprehensive revisions to the accountancy statutes that became effective July 1, 2007, some new regulations are needed, and most of the current regulations are no longer needed. The comprehensive revisions to the accountancy statutes therefore require comprehensive revisions to the regulations. Accordingly, the Virginia Board of Accountancy (Board) is proposing to replace all of its current regulations with new regulations.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

At its July 1, 2009, meeting, the Board approved proposing through the fast track regulatory process new regulations that would replace all of the current regulations. The proposed new regulations were subsequently reviewed with the Department of Planning and Budget (DPB) and the Office of the Governor. On October 8, 2009, the Office of the Governor gave its initial approval of proposing the new regulations through the fast track regulatory process.

Although there had been no substantive changes to the proposed new regulations since the Board's July 1, 2009, meeting and since the Office of the Governor's initial approval on October 8, 2009, there had been some clarifying changes. At its November 24, 2009, meeting, the Board approved the final wording of the proposed new regulations that appears in the Form TH-04. On December 17, 2009, the Office of the Governor reviewed that wording and gave its final approval of proposing the new regulations through the fast track regulatory process. The Virginia Society of Certified Public Accountants, whose members comprise over a third of the approximately 22,500 persons who hold a Virginia license, is submitting a letter expressing its support of the proposed new regulations.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

The Board was established under the former § 54.1-2000 of the Code of Virginia and was reestablished as an independent board by subsection A of § 54.1-4402 of the Code of Virginia. Subsection H of § 54.1-4402 of the Code of Virginia gives the Board the responsibility of enforcing the accountancy statutes and establishing by regulation rules and procedures for the implementation of those statutes.

- a. The accountancy statutes (statutes) are in Chapter 44 (§ 54.1-4400 et seq.) of Title 54.1 of the Code of Virginia.
- b. The Board's regulations (regulations) are in Chapter 21 of Agency 5, Title 18 of the Virginia Administrative Code (18VAC5-21).

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

Primarily because of the comprehensive revision of the statutes in 2007, there are considerable deficiencies in the current regulations.

- a. Most of the current regulations are no longer needed because the subject matter is now addressed in the statutes. For example, all the definitions the Board believes are necessary are now in the statutes. In addition, the statutes now have standards of conduct and practice that will remain evergreen. Definitions and standards of conduct and practice are therefore no longer needed in the regulations.
- b. Because of the 2007 revisions to the statutes, many of the current regulations are inconsistent with the statutes. For example, some terms are defined differently in the statutes and the current regulations. In addition, standards of conduct and practice in the current regulations are out-of-date and therefore inconsistent with the guidance that is now in the statutes.
- c. The current regulations do not address issues that the 2007 revisions to the statutes require the regulations to address. For example, the 2007 revisions to the statutes gave the Board the ability to enter into confidential consent agreements and directed the Board to adopt regulations identifying the type of minor violations for which confidential consent orders may be offered and limit the number of confidential consent orders that may be offered to the same licensee in any given period.
- d. There are a number of inconsistencies within sections of the current regulations that continue to be applicable. In addition, clarifying changes are needed to most of the current regulations that continue to be applicable. Examples follow using the regulations on continuing professional education.
 1. The current regulations on continuing professional education are extremely difficult to understand, for example by taking inconsistent positions for categories of licensees.
 2. The current regulations on continuing professional education also do not address some important issues, such as whether the holder of a Virginia license who has been exempt from the requirement to obtain continuing professional education should be required to obtain continuing professional education before he begins providing services to the public or to an employer.
- e. Some of the current regulations were time-sensitive and are no longer relevant. For example, regulations on the CPA examination before it became computer-based are no longer relevant. In addition, some of the current regulations refer to statutes that were repealed by the 2007 revisions.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

The deficiencies in the current regulations are causing considerable confusion among licensees and the public over how to apply the requirements of the statutes and the regulations. The staff and executive committee of the Virginia Society of Certified Public Accountants informed members of the Board that they have received a significant number of inquiries. The staff and members of the Board have also received inquiries directly. Confusion among licensees and the public over how to apply the requirements of the statutes and regulations increases the risk of noncompliance and the time required to assess and enforce compliance. Deficiencies in the current regulations should therefore be cured as soon as possible.

The Board set five criteria in developing the changes to the regulations to propose through the fast track regulatory process:

1. remove regulations that are now addressed by the statutes,
2. add the emergency regulation that became effective May 14, 2009,
3. add interpretations required as a result of the 2007 revisions to the statutes,
4. clarify the existing guidance that continues to be applicable, and
5. eliminate the current regulations that were time-sensitive and are no longer needed and the current regulations that only refer to other regulations.

Changes that conform with these criteria can only have a positive economic effect. By eliminating the current deficiencies, the risk of noncompliance and the time required to assess compliance will be reduced. No negative economic effects are anticipated. The Virginia Society of Certified Public Accountants, whose members comprise over a third of the approximately 22,500 persons who hold a Virginia license, is submitting a letter expressing its support of the proposed new regulations. On December 17, 2009, the Office of the Governor approved proposing the new regulations through the fast track regulatory process.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)

The proposed regulations are designed to replace the current regulations with 17 new sections.

1. 18VAC5-22-10. Definitions.
2. 18VAC5-22-20. Fees.
3. 18VAC5-22-30. Determining whether persons or entities to whom communications are made, or for whom services are provided, are located in Virginia.
4. 18VAC5-22-40. Determining whether a person who holds a Virginia license is providing services to the public using the CPA title or to an employer using the CPA title.
5. 18VAC5-22-50. Determining whether the principal place of business of a person using the CPA title, or of a firm, is in Virginia.
6. 18VAC5-22-60. Determining whether a college or university is an accredited institution.
7. 18VAC5-22-70. Education.
8. 18VAC5-22-80. Examination.
9. 18VAC5-22-90. Continuing professional education.
10. 18VAC5-22-100. Experience.
11. 18VAC5-22-110. Demonstrating that a person's education, CPA examination, and experience are substantially equivalent to the requirements for obtaining a Virginia license.
12. 18VAC5-22-120. Supervision of firm personnel.
13. 18VAC5-22-130. Owners of firms who are not licensees.
14. 18VAC5-22-140. Persons who release or authorize the release of reports.
15. 18VAC5-22-150. Monitoring program and peer review.
16. 18VAC 5-22-160. Confidential consent agreements.
17. 18VAC5-22-170. Communication between the Board and licensees.

Although there are 17 sections, the length of the proposed new regulations is approximately one-third the length of the current regulations.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;
 - 2) the primary advantages and disadvantages to the agency or the Commonwealth; and
 - 3) other pertinent matters of interest to the regulated community, government officials, and the public.
- If there are no disadvantages to the public or the Commonwealth, please indicate.
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The new regulations will eliminate the significant confusion that currently exists largely because of the inconsistencies between the statutes as they were revised in 2007 and the current regulations. This confusion increases the risk of noncompliance. The new regulations will protect the public by eliminating the confusion and decreasing the risk of noncompliance.

Eliminating the confusion will also reduce the number of inquiries of the Board and its staff about how to apply the statutes and regulations. In addition, reducing the risk of noncompliance will reduce the number of enforcement cases. The reduction in the number of inquiries and enforcement cases will enable the Board and its staff to focus on other issues.

There are no disadvantages to the public or the Commonwealth in implementing the new regulations the Board is proposing.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no localities that will be particularly affected by the new regulations.

Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5)

the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

The proposed new regulations will make compliance with the statutes and regulations easier, which makes it easier for licensees and their firms to conduct business in the Commonwealth. The proposed new regulations also provide flexibility, which will also make it easier for licensees and their firms to conduct business in the Commonwealth.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

Since the proposed regulations are designed primarily to conform the regulations with the extensive revisions to the statutes that became effective July 1, 2007, the proposed regulations can cause no additional costs to be incurred. Instead, the proposed regulations will likely produce cost savings because they will reduce the time it takes to understand the statutes and regulations and how to implement their requirements.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</p>	<p>No additional costs will be incurred.</p>
<p>Projected cost of the regulation on localities</p>	<p>No additional costs will be incurred.</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the regulation</p>	<p>The new regulations will only directly affect persons who use the CPA title in Virginia and firms that provide attest services or compilation services to persons or entities located in Virginia.</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>It is impossible to estimate with a reasonable degree of precision the number of entities that will be affected. Approximately 22,500 persons and 1,200 firms hold a Virginia license. However, the new regulations will not just affect persons and firms that hold a Virginia license; they will also affect persons who use the CPA title in Virginia and firms that provide attest services or compilation services to persons or entities located in Virginia under the substantial equivalency provisions of the statutes. Those persons and firms are not required to notify the Board when they use the CPA title in Virginia or provide</p>

	attest services or compilation services to persons or entities located in Virginia.
All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.	No additional costs will be incurred. The Board believes the new regulations will likely reduce the cost of compliance.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

Many alternatives were discussed, but none were deemed viable by the Board.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The new regulations will make it easier for people to comply with the requirements to provide services using the CPA title in Virginia. Increased self-sufficiency, self-pride, and responsibility for oneself, as well as increased disposable family income for all such persons should result.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

The Form TH-04 proposes to repeal all of the Board’s current regulations, which are in Chapter 21 of 18VAC5, to add a new Chapter 22, and to add the Board’s new regulations to Chapter 22.

The proposed regulations added to Chapter 22 include, as 18VAC5-22-70, the emergency regulation that became effective May 14, 2009.

The Form TH-04 is presented in two parts—the basic form, which is presented on pages 1 through 25, and a supplement which appears after the basic form. The pages in the supplement are numbered 1 through 99.

The basic form—

- a. presents the proposed new regulations that will replace the current regulations,
- b. accompanies each of the proposed new regulations with a general explanation, and
- c. summarizes the main reasons for deletion of most of the current regulations.

The level of detail in the basic form is likely to be helpful for most members of the public evaluating the proposed changes. However, DPB requested that a more detailed explanation be prepared for its use. In case some members of the public want more detailed explanations, the detailed analysis requested by DPB is included in the Form TH-04 as a supplement. The supplement consists of three parts:

- a. The first part is an introduction. This part is on pages 1 through 4 of the supplement.
- b. The second part is a thorough analysis of the disposition of each of the regulations in Chapter 21. This part is on pages 5 through 82 of the supplement.
- c. The third part shows the proposed Chapter 22 with the new regulations. Each of the proposed new regulations is accompanied by a detailed explanation of the Board's conclusions for proposing it. The third part is on pages 83 through 99 of the supplement.

Where relevant, discussions in the basic form are cross-referenced to more detailed discussions in the supplement.

THE PROPOSED NEW REGULATIONS THAT WILL REPLACE THE CURRENT REGULATIONS

The regulations the Board is proposing follow. Each section of the proposed new regulations is followed by an explanation that is presented in *italics* and cross-referenced to the more detailed discussion in the supplement. References introduced by “§” or “section” in the explanations are citations to the Code of Virginia.

18VAC5-22-10. Definitions.

The definitions in § 54.1-4400 of the Code of Virginia apply to these regulations.

The current regulations, in 18VAC5-21-10, provide a glossary. As a result of the 2007 revisions, § 54.1-4400 contains all the definitions the Board believes are necessary. Therefore, the Board believes there is no need for a separate definitions section in the regulations. In addition, the revisions significantly changed most of the definitions that were in the former statutes and the current regulations. The Board proposes to replace the current 18VAC5-21-10 with 18VAC5-22-10, which would serve as a placeholder in case future definitions are needed. The supplement provides a detailed analysis of the changes to each of the definitions in 18VAC5-21-10 on pages 5 through 16.

18VAC5-22-20. Fees.

A. The Board, which § 54.1-4400 of the Code of Virginia defines as the Virginia Board of Accountancy, shall charge the following fees for services it provides:

- Processing an application to take the CPA examination \$ 120
- Processing an application for issuance of a Virginia license 24
- Processing an application for the timely renewal of a Virginia license 24
- Additional fee for processing an application for a license renewal that is not timely 25
- Processing an application for reinstatement of a Virginia license 250
- Processing an application for lifting the suspension of the privilege of using the CPA title in Virginia or for lifting the suspension of the privilege of providing attest services or compilation services for persons or entities located in Virginia 250
- Providing an additional CPA wall certificate 25
- Additional fee for not using the online payment option for any service provided by the Board 5

B. All fees for services the Board provides are due when the service is requested and are nonrefundable.

The current regulations, in 18VAC5-21-20, prescribe requirements for fees. The Board is not proposing fee increases through the fast track regulatory process. However, revisions are

necessary to conform with the language of the revised statutes and to eliminate unnecessary parts of 18VAC5-21-20. The Board is therefore proposing to replace 18VAC5-21-20 with 18VAC5-22-20. The supplement provides a detailed analysis of the changes to 18VAC5-21-20 on pages 16 through 18 and discusses the proposed 18VAC5-22-20 on pages 83 and 84.

18VAC5-22-30. Determining whether persons or entities to whom communications are made, or for whom services are provided, are located in Virginia.

For the purpose of complying with Chapter 44 (§ 54.1-4400 et seq.) of Title 54.1 of the Code of Virginia for communication to persons or entities located in Virginia or providing services for persons or entities located in Virginia, persons are considered to be located in Virginia if their primary residence for federal income tax reporting is located in Virginia, and entities are considered to be located in Virginia if they conduct any activities in Virginia.

The notion of being located in Virginia is new and appears in different parts of the revised statutes. Providing requirements for determining whether a person or entity is located in Virginia is difficult. Therefore, in developing the proposed new regulation, the Board used a practical solution that it believes will best protect the public. The supplement discusses the proposed 18VAC5-22-30 on page 84.

18VAC5-22-40. Determining whether a person who holds a Virginia license is providing services to the public using the CPA title or to an employer using the CPA title.

For the purpose of determining whether a person who holds a Virginia license is providing services to the public using the CPA title or to an employer using the CPA title, as those terms are defined in § 54.1-4400 of the Code of Virginia, because of the written information readily available to the public through the Board's Internet postings, holding a Virginia license constitutes using the CPA title. Accordingly, a person who holds a Virginia license—

1. is providing services to the public using the CPA title if he provides services that are subject to the guidance of the standard-setting authorities listed in the standards of conduct and practice in subdivisions 5 and 6 of § 54.1-4413.3.
2. is providing services to an employer using the CPA title if he provides to an entity services that require the substantial use of accounting, financial, tax, or other skills that are relevant, as determined by the Board.

This proposed regulation was primarily designed to clarify that whether the holder of a Virginia license is subject to the requirement to obtain continuing professional education depends on whether he provides services, rather than whether he tells the person or entity for whom he provides the services that he is a CPA. However, the clarification has broader application than the continuing professional education requirements and accordingly is being proposed as a separate regulation. For example, the proposed regulation clarifies that the holder of a Virginia license cannot avoid compliance with the standards of conduct and practice prescribed by § 54.1-4413.3 by not telling the person or entity for whom he is providing services that he is a CPA. The supplement discusses the proposed 18VAC5-22-40 on pages 84 through 86.

18VAC5-22-50. Determining whether the principal place of business of a person using the CPA title, or of a firm, is in Virginia.

Complying with subdivision A 1 of § 54.1-4409.1, subsection B of § 54.1-4411, or subsection B of § 54.1-4412.1 of the Code of Virginia requires the person or firm to use reasonable judgment in determining whether Virginia is the principal place of business in which the person provides services to the public using the CPA title or the firm provides attest services or compilation services. The determination shall be reasonable considering the facts and circumstances and can be based on quantitative or qualitative assessments. The determination shall be reconsidered for changes in facts and circumstances that are not temporary.

The notion of principal place of business appears in different parts of the revised statutes. The revised statutes do not require a person or firm to determine where the principal place of business is, only whether it is in Virginia. The proposed 18VAC5-22-50 therefore provides requirements for how to determine whether the principal place of business is in Virginia. Providing requirements for this determination is complex. In the proposed new regulation, the Board used a practical solution that it believes best protects the public. The supplement discusses the proposed 18VAC5-22-50 on pages 86 and 87.

18VAC5-22-60. Determining whether a college or university is an accredited institution.

- A. For the purpose of complying with subdivision A 1 a of § 54.1-4409.2 of the Code of Virginia, a college or university that is not accredited by one of the six major regional accrediting organizations listed in the definition of “accredited institution” in § 54.1-4400 of the Code of Virginia or their successors shall be considered an accredited institution if it is accredited by an accrediting organization recognized by The Council on Higher Education Accreditation (CHEA) or its successor. Publication of the name of the accrediting organization by CHEA or its successor shall be sufficient notification that the accrediting organization is recognized by CHEA or its successor.
- B. To determine whether a college or university is an accredited institution if it is accredited by an accrediting organization that is neither one of the six major regional accrediting organizations or their successors, nor an accrediting organization recognized by CHEA or its successor, representatives of the accrediting organization shall meet with a task force appointed by the Board to study and recommend to the Board how the organization shall demonstrate that its accreditation process and standards are substantially equivalent to the accreditation process and standards of the six major regional accrediting organizations or their successors. The size and composition of the task force shall depend on the facts and circumstances. However, at least one of the members of the task force shall have substantial experience with the accreditation process and standards of the six major regional accrediting organizations or their successors.

After the task force provides its recommendations to the Board, the Board shall decide what the requirements shall be to demonstrate that the accreditation process and standards

of the accrediting organization are substantially equivalent to the accreditation process and standards of the six major regional accrediting organizations or their successors and shall communicate its decision to the organization. The organization shall then provide the required documentation to the Board that will enable the Board to decide whether a college or university accredited by the organization is an accredited institution as defined in § 54.1-4400 of the Code of Virginia.

The current regulations, in 18VAC5-21-10, define “accredited institution” generally as a college or university accredited by one of the six major regional accrediting organizations. One of the 2007 revisions to the statutes was to define “accredited institution” but in a broader way than the definition in the current regulations. Under the definition in § 54.1-4400, a college or university can be considered to be an accredited institution if either—

- a. it is accredited by one of the six major regional accrediting organizations, or*
- b. it is accredited by an accrediting organization demonstrating to the Board that its accreditation process and standards are substantially equivalent to the accreditation process and standards of the six major regional accrediting organizations.*

The proposed 18VAC5-22-60 provides requirements for how an accrediting organization can demonstrate substantial equivalence to the accreditation process and standards of the six major accrediting organizations. The supplement provides a detailed analysis of the changes to the definition of “accredited institution” in the current regulations on pages 5 and 6, and it discusses the proposed 18VAC5-22-60 on pages 87 and 88.

18VAC5-22-70. Education.

- A. In order for a person to take the CPA examination through Virginia, he must have obtained from one or more accredited institutions or from the National College at least 120 semester hours of education, a baccalaureate or higher degree, and an accounting concentration or equivalent prior to taking any part of the CPA examination.
- B. For the purpose of complying with subsection A of this section and with subdivision A 1 a of § 54.1-4409.2 of the Code of Virginia, obtaining an accounting concentration or equivalent requires obtaining at a minimum:
 1. 24 semester hours of accounting courses, including courses in auditing, financial accounting, management accounting, and taxation; and
 2. 24 semester hours of business courses, no more than six semester hours of which could be considered accounting courses.

Principles or introductory accounting courses cannot be considered in determining whether a person has obtained the 48 minimum number of semester hours required for an accounting concentration or equivalent.

With the exception of some required numbering and lettering changes, the proposed 18VAC5-22-70 is the same as the emergency regulation that became effective May 14, 2009, and appears in the current regulations as subsection B of 18VAC5-21-30. The supplement discusses subsection B of 18VAC5-21-30 on pages 19 and 20, and it discusses the proposed 18VAC5-22-70 on pages 88 and 89.

18VAC5-22-80. Examination.

- A. In order to comply with subdivision A 1 b of § 54.1-4409.2 of the Code of Virginia:
1. Each section of the CPA examination must be passed by attaining a uniform passing grade established through a psychometrically acceptable standard-setting procedure approved by the Board.
 2. Persons may take sections of the CPA examination in any order.
 3. A person who fails a section of the CPA examination may not retake that section until the next quarter of the calendar year.
 4. When a person first passes a section of the CPA examination, he has 18 months to pass the remaining sections. If the remaining sections are not passed within the 18-month period, the person loses credit for the first section passed, and a new 18-month period starts with the next section passed.
- B. Failure to comply with the policies established by the Board for conduct at the CPA examination may result in the loss of eligibility to take the CPA examination or credit for sections of the CPA examination passed. Cheating by a person in connection with the CPA examination shall invalidate any grade earned on any section of the CPA examination and may warrant expulsion from the CPA examination site and disqualification from taking the CPA examination for a specified period of time as determined by the Board.
- C. The Board may postpone scheduled CPA examinations, the release of grades, or the issuance of licenses under the following circumstances:
1. A breach of CPA examination security;
 2. Unauthorized acquisition or disclosure of the contents of a CPA examination;
 3. Suspected or actual negligence, errors, omissions, or irregularities in conducting a CPA examination; or
 4. Any other reasonable circumstances.
- D. Prior to being considered for a Virginia license, a person shall pass an ethics examination approved by the Board.

The current regulations prescribe examination requirements in subsection C of 18VAC5-21-30. The Board proposes to replace subsection C of 18VAC5-21-30 with 18VAC5-22-80. In drafting the proposed 18VAC5-22-80, the Board generally retained some of the requirements of subsection C of 18VAC5-21-30 but updated and simplified the wording. In addition—

- a. The definition of “CPA examination” in § 54.1-4400 was written so that it would remain evergreen and providing detail in the regulations would be unnecessary.*
- b. Some parts of subsection C of 18VAC5-21-30 of the current regulations were time-sensitive and are no longer necessary.*

The supplement provides a detailed analysis of the changes to subsection C of 18VAC5-21-30 on pages 20 through 24 and discusses the proposed 18VAC5-22-80 on 89 and 90.

18VAC5-22-90. Continuing professional education.

- A. If during the current calendar year a person who holds a Virginia license provided services to the public using the CPA title, he shall have obtained at least 120 hours of continuing professional education during the three-calendar-year period ending with the current calendar year. For each of the calendar years in that period, he shall have obtained at least 20 hours of continuing professional education, including an ethics course of at least two hours.
 1. If the person also holds the license of another state and Virginia is not the principal place of business in which he provides services to the public using the CPA title, the ethics course taken to comply with this subsection either shall conform with the requirements prescribed by the Board or shall be an ethics course acceptable to the board of accountancy of another state in which the person holds a license.
 2. Otherwise, the ethics course shall conform with the requirements prescribed by the Board.
- B. If during the current calendar year a person who holds a Virginia license provided services to an employer using the CPA title and did not provide services to the public using the CPA title, he shall have obtained a minimum number of hours of continuing professional education determined as follows:
 1. If the current calendar year is 2009 or 2010, the person shall have obtained at least 90 hours of continuing professional education during the three-calendar-year period ending with the current calendar year. For each of the calendar years in that period, he shall have obtained at least 15 hours of continuing professional education, including an ethics course of at least two hours.
 2. If the current calendar year is 2011 or later, the person shall have obtained at least 120 hours of continuing professional education during the three-calendar-year period

ending with the current calendar year. For each of the calendar years in that period, he shall have obtained at least 20 hours of continuing professional education, including an ethics course of at least two hours.

The ethics course taken to comply with this subsection either shall conform with the requirements prescribed by the Board or shall be an ethics course acceptable to the board of accountancy of another state in which the person holds a license.

- C. If during the current calendar year a person who holds a Virginia license provided services to the public using the CPA title or to an employer using the CPA title and did not hold a Virginia license or the license of another state during one or both of the two preceding calendar years, he shall determine whether he has complied with the requirements of subsection A or B of this section as follows:
1. If the person became licensed during the current calendar year, he shall be considered to have met the requirements of the subsection for the three-calendar-year period ending with the current calendar year.
 2. If the person became licensed during the preceding calendar year, he shall be considered to have met the requirements of the subsection for the three-calendar-year period ending with the current calendar year if during the current calendar year he obtained at least the minimum number of hours of continuing professional education required by the subsection for the current calendar year, including an ethics course of at least two hours.
 3. If the person became licensed during the calendar year prior to the preceding calendar year, he shall be considered to have met the requirements of the subsection for the three-calendar-year period ending with the current calendar year if during the current calendar year and the preceding calendar year he obtained at least the minimum number of hours of continuing professional education required by the subsection for each of the years, including for each year an ethics course of at least two hours.
- D. If during the current calendar year a person who holds a Virginia license did not provide services to the public using the CPA title or to an employer using the CPA title, he is not required to have obtained continuing professional education during the three-calendar-year period ending with the current calendar year. However, in order to begin providing those services—
1. He is required to have obtained at least 120 hours of continuing professional education prior to providing the services, including an ethics course of at least two hours.
 2. The ethics course shall conform with the requirements prescribed by the Board for the calendar year in which the person begins providing the services.

Continuing professional education obtained during the three calendar years prior to the current calendar year and from the start of the current calendar year to when he begins providing the services shall be considered in determining whether the person has complied with the requirements of this subsection.

- E. If a person who has not held the license of any state applies for a Virginia license after the end of the calendar year in which he passes the CPA examination, he shall obtain continuing professional education prior to applying for the license, including an ethics course of at least two hours.
1. The required minimum number of hours of continuing professional education shall be 40, 80, or 120 depending on whether he applies for the Virginia license by the end of the first calendar year after the calendar year in which he passes the CPA examination, by the end of the second calendar year, or later.
 2. The ethics course shall conform with the requirements prescribed by the Board for the calendar year in which the person applies for the license.

Continuing professional education obtained subsequent to passing the CPA examination but during the three calendar years prior to the calendar year in which the person applies for the license and from the start of that calendar year to when he applies for the license shall be considered in determining whether he has complied with this requirement.

- F. Continuing professional education acceptable to the Board may be obtained through a variety of forums, provided there is a means of demonstrating that the education was obtained. The following forums are acceptable:
1. Attendance at seminars and educational conferences, provided that the instructors have appropriate knowledge of the subject matter and use appropriate teaching materials and that attendance is monitored in a manner that can be verified by the Board;
 2. Taking courses at an accredited institution for credit;
 3. Self-study courses, provided there is a method for determining that the person met the learning objectives;
 4. Making a presentation at a professional seminar, educational conference, or in a classroom setting, provided the person has appropriate knowledge of the subject matter and uses appropriate teaching materials; and
 5. Writing material that is relevant to providing services to an employer using the CPA title or to the public using the CPA title, that is formally reviewed by an independent party, and that is published in a book, magazine, or similar publication that is used by persons who provide services to the public using the CPA title or to an employer using the CPA title.

Whether other forums are acceptable shall be determined by the Board on a case-by-case basis.

- G. In determining whether a person has obtained the required number of hours of continuing professional education:
1. Repeat presentations shall not be considered.
 2. No more than 30 hours from preparing for and making presentations shall be considered during each three-calendar-year period.
 3. One semester-hour of credit for courses at an accredited institution constitutes 15 hours of continuing professional education, and one quarter-hour of credit constitutes 10 hours of continuing professional education.
- H. Depending on the facts and circumstances, the Board may waive all or part of the continuing professional education requirement for one or more calendar years or grant additional time for complying with the continuing professional education requirement, provided that the waiver or deferral is in the public interest.

The current regulations prescribe requirements for continuing professional education in 18VAC5-21-170. The proposed 18VAC5-22-90 would replace 18VAC5-21-170. In addition, the proposed 18VAC5-22-40, which is entitled "Determining whether a person who holds a Virginia license is providing services to the public using the CPA title or to an employer using the CPA title," clarifies that the requirement to obtain continuing professional education depends on whether services are provided, not whether the holder of the Virginia license tells the person or entity for whom he provides services that he is a CPA. A summary of the effect on the continuing professional education requirements of adding the proposed 18VAC5-22-40 and replacing 18VAC5-21-170 with the proposed 18VAC5-22-90 follows.

- a. The clarity of the continuing professional education requirements will be improved significantly.*
- b. The terminology and definitions will conform with the terminology and definitions now used in the statutes as a result of the 2007 revisions.*
- c. Effective dates and cites that are no longer relevant will be eliminated.*
- d. The transition period presently available for persons who provide services to an employer using the CPA title will not be affected.*
- e. There will be no change in the amount of continuing professional education required.*
- f. The requirement to obtain continuing professional education in ethics will focus on professional ethics rather than the statutes and regulations and provide situations in*

which an ethics course acceptable to the board of accountancy of another state in which the person holds a license will satisfy the requirement.

- g. It will be clear that the requirement to obtain continuing professional education cannot be avoided by not saying that the person providing services is a CPA.*
- h. The holder of a Virginia license will still be able to use the CPA title in Virginia without obtaining continuing professional education as long as he does not provide services to the public using the CPA title or to an employer using the CPA title. If he begins providing those services, he will be subject to the continuing professional education requirements prospectively and will also be subject to a catch-up requirement that must be met before he begins providing services.*
- i. It will be clear how to apply the three-calendar-year requirements after a person who has not previously been licensed first obtains a Virginia license.*
- j. It will be clear when a person who has not previously been licensed must obtain continuing professional education prior to applying for a Virginia license.*
- k. The Board will continue to have the ability to waive or defer the continuing professional education requirements.*
- l. A holder of a Virginia license will still need to be able to document compliance with the continuing professional education requirements.*
- m. It will be clear that continuing professional education can be obtained through a variety of forums.*
- n. There will be no change to the amount of continuing professional education obtained through making presentations that can be considered in determining whether a person has complied with the continuing professional education requirements. In addition, there will continue to be no limit on the amount of continuing professional education obtained through writing that can be considered.*

The supplement provides a detailed analysis of the changes to 18VAC5-21-170 on pages 62 through 82, and it discusses the proposed 18VAC5-22-90 on pages 90 through 94.

18VAC5-22-100. Experience.

Prior to applying for a license, a person must have been employed in academia, a firm, government, or industry in any capacity involving the substantial use of accounting, financial, tax, or other skills that are relevant, as determined by the Board, to providing services to the public using the CPA title or to an employer using the CPA title for a period that is the full-time equivalent of one year. Whether other skills are relevant shall be determined by the Board on a case-by-case basis. Self-employment does not meet the definition of “experience” in § 54.1-4400 of the Code of Virginia.

The current regulations, in subsection D of 18VAC5-21-30, prescribe an experience requirement that must be met prior to applying for a license. The proposed 18VAC5-22-100 would replace the requirements of subsection D of 18VAC5-21-30. The 2007 revisions to the statutes added a definition of “experience” to § 54.1-4400 and added a statement in subdivision A 1 d of § 54.1-4409.2 that the Board will prescribe an experience requirement. The proposed 18VAC5-22-100 prescribes the experience requirement based on the definition of “experience” in § 54.1-4400. In addition, the last sentence of the proposed 18VAC5-22-100 clarifies that the Board intends for experience to be obtained through mentoring and that self-employment of any type does not qualify. The supplement provides a detailed analysis of the changes to subsection D of 18VAC 5-21-30 on pages 24 through 26, and it discusses the proposed 18VAC5-22-100 on page 94.

18VAC5-22-110. Demonstrating that a person’s education, CPA examination, and experience are substantially equivalent to the requirements for obtaining a Virginia license.

Subdivision A 2 of § 54.1-4411 of the Code of Virginia does not require the person to notify the Board that the person’s education, CPA examination, and experience are substantially equivalent to the requirements for obtaining a Virginia license.

Subsection A of § 54.1-4411, which was added to the statutes by the 2007 revisions, prescribes the two ways a person licensed in another state can be considered to have met requirements that are substantially equivalent to those prescribed by the Board. The second of those two is that the person has demonstrated meeting education, CPA examination, and experience requirements that are substantially equivalent to those prescribed by the Board. The proposed 18VAC5-22-110 clarifies that the Board intended that the person would not be required to notify the Board that his education, CPA examination, and experience are substantially equivalent to the requirements for obtaining a Virginia license. The supplement discusses the proposed 18VAC5-22-110 on page 94.

18VAC5-22-120. Supervision of firm personnel.

To comply with subdivision C 2 of § 54.1-4412.1 of the Code of Virginia, a person’s work must be planned, supervised, and reviewed by a person who either (i) holds a Virginia license or (ii) holds the license of another state and complies with the substantial equivalency provisions of § 54.1-4411 of the Code of Virginia.

The supervision notion was added to the statutes by the 2007 revisions and was intended to encompass not just supervision but also planning and review. The proposed 18VAC5-22-120 makes that intention clear. The supplement discusses the proposed 18VAC5-22-120 on pages 94 and 95.

18VAC5-22-130. Owners of firms who are not licensees.

To comply with subdivision D 2 of § 54.1-4412.1 of the Code of Virginia, owners of a firm who are not licensees must be persons who, based on the facts and circumstances, participate in the firm’s activities on a regular, continuous, and substantial basis.

The current regulations, in subdivisions B 2 and C 2 of 18VAC5-21-60, prescribe a minimum number of hours owners who are not licensees must work for a firm. The Board proposes to replace those requirements with 18VAC5-22-130. The Board believes practice has changed so that prescribing a minimum number of hours is no longer effective in protecting the public. The intention of subdivision D 2 of § 54.1-4412.1, which was added through the 2007 revisions, is to prevent control of firms by passive investors. The proposed 18VAC5-22-130 makes that intention clear, using language patterned after the Internal Revenue Service guidance on determining whether an individual is a passive investor. The supplement provides a detailed analysis of the changes to subdivisions B 2 and C 2 of 18VAC5-21-60 on pages 40 through 42, and it discusses the proposed 18VAC5-22-130 on page 95.

18VAC5-22-140. Persons who release or authorize the release of reports.

- A. To comply with subdivision D 4 of § 54.1-4412.1 of the Code of Virginia, a person who releases or authorizes the release of reports on attest services or compilation services provided for persons or entities located in Virginia shall annually obtain a minimum of eight hours of continuing professional education related to attest services or compilation services. The hours obtained to meet this requirement shall be considered in determining whether the person has complied with the requirements of 18VAC5-22-90.
- B. Firms providing attest services or compilation services shall establish policies and procedures to provide the firm with reasonable assurance that persons who release or authorize the release of reports on attest services or compilation services possess the kinds of competencies that are appropriate given the facts and circumstances. These policies and procedures shall address the required technical proficiency, familiarity with the industry and the person or entity, skills that indicate sound professional judgment, and other competencies necessary under the circumstances.

The current regulations, in 18VAC5-21-50, prescribe requirements for a person who releases or authorizes the release of reports on attest services or compilation services. The Board proposes to replace the requirements of 18VAC5-21-50 with 18VAC5-22-140. Subdivision B 2 of 18VAC5-21-50 generally imposes an experience requirement on those persons that is based on a minimum number of hours. The Board believes practice has changed so that prescribing a minimum number of hours is no longer effective in protecting the public.

The overriding objective of subdivision D 4 of § 54.1-4412.1, which was added in the 2007 revisions, is to require that a firm have procedures in place to ensure that persons who release or authorize the release of reports have the kinds of competencies that are appropriate for the engagement. The competencies addressed in the proposed 18VAC5-22-140 are patterned after quality control standards established by the American Institute of Certified Public Accountants. The Board also believes that the public is better protected if these persons obtain at least eight hours each year of continuing professional education related to attest services or compilation services. The proposed requirement does not increase the total number of hours of continuing professional education required.

The supplement provides a detailed analysis of the changes to 18VAC5-21-50 on pages 34 through 37, and it discusses the proposed 18VAC5-22-140 on pages 95 and 96.

18VAC5-22-150. Monitoring program and peer review.

In order to comply with subdivision D 6 of § 54.1-4412.1 of the Code of Virginia, a firm shall comply with all components of the monitoring program in which it is enrolled, except that, depending on the facts and circumstances, the Board may waive the requirement for a peer review or grant additional time for complying with the requirement.

The current regulations prescribe requirements for peer review in 18VAC5-21-70, but changes in national peer review requirements have made much of 18VAC5-21-70 out-of-date. Because the 2007 revisions to the statutes define “peer review” in § 54.1-4400 in a way that makes it evergreen, the Board believes the regulations should only address three aspects of peer review. The first two are addressed by this proposed regulation, and the third aspect is addressed by subdivision A 2 of the proposed 18VAC5-22-170, which is entitled “Communication between the Board and licensees.” The supplement provides a detailed analysis of the changes to 18VAC5-21-70 on pages 42 through 45, and it discusses the proposed 18VAC5-22-150 on pages 96 and 97.

18VAC5-22-160. Confidential consent agreements.

To determine whether to enter into a confidential consent agreement under subsection A of § 54.1-4413.5 of the Code of Virginia, the Board shall consider a violation minor if the Board believes that the violation was not intentional misconduct, was not the result of gross negligence, and did not have a significant financial impact on persons or entities. The Board shall enter into no more than two additional confidential consent agreements with a person or firm within ten years after the first confidential consent agreement.

This proposed regulation is in response to the 2007 revision to the statutes that gave the Board the ability to enter into confidential consent agreements and directed the Board to provide regulations that identify the type of minor violations for which confidential consent orders may be offered and limit the number of confidential consent orders that may be offered to the same licensee in any given period. The supplement discusses the proposed 18VAC5-22-160 on pages 97 and 98.

18VAC5-22-170. Communication between the Board and licensees.

A. When requested by the Board:

1. Persons or firms applying for the issuance, renewal, or reinstatement of a Virginia license or for lifting the suspension of the privilege of using the CPA title in Virginia or providing attest services or compilation services for persons or entities located in Virginia shall provide the Board with support for their conclusion that they have complied with applicable provisions of Chapter 44 (§ 54.1-4400 et seq.) of Title 54.1 of the Code of Virginia and Board regulations.

2. Firms shall provide the Board with proof of enrollment in a monitoring program and copies of reports and other documentation related to acceptance of their peer reviews.
3. Persons or firms shall provide the Board documents related to the Board's investigation of their possible violation of provisions of Chapter 44 (§ 54.1-4400 et seq.) of Title 54.1 of the Code of Virginia or Board regulations.

Each person or firm shall respond within 30 calendar days to any request for information by the Board under this subsection.

- B. Each holder of a Virginia license shall notify the Board in writing within 30 calendar days of any change in the holder's name or in the postal and electronic addresses where the person or firm may be reached.
- C. The Board shall transmit license renewal notices electronically unless a person or firm is unable to communicate electronically. However, § 54.1-4413.2 of the Code of Virginia places the responsibility for renewing a Virginia license on its holder, and that responsibility is not affected by whether the holder receives a license renewal notice.

A number of the current regulations require providing documentation when requested by the Board. Rather than prescribing each situation, the Board believes a more efficient and effective approach to protecting the public is to establish a general requirement in this proposed new regulation. The supplement discusses the proposed 18VAC5-22-170 on pages 98 and 99.

A SUMMARY OF THE MAIN REASONS FOR DELETION OF MOST OF THE CURRENT REGULATIONS

1. A summary of the main reasons for deletion of most of the current regulations follows. It is presented in four sections:
 - a. A summary of the current regulations that are no longer needed because of the 2007 revisions to the statutes.
 - b. A summary of the current regulations that would be replaced with a general requirement to comply with the Board's request for information.
 - c. A summary of the current regulations that were time-sensitive and are no longer needed.
 - d. A summary of the current regulations that only refer to other regulations and are therefore unnecessary

The sections are cross-referenced to the more detailed discussion in the supplement.

A Summary of the Current Regulations That Are No Longer Needed Because of the 2007 Revisions to the Statutes

2. **Glossary.** Prior to the 2007 revisions to the statutes, both the statutes and the regulations had a glossary. One of the revisions to the statutes was a comprehensive revision of its glossary, which is in § 54.1-4400. Some definitions were added, some were deleted, and the remaining definitions were updated to reflect significant changes that have occurred since the definitions were first provided. The Board believes the glossary in the revised statutes is sufficient and that there is therefore no need for a glossary in the regulations.

3. While the new regulations include a definitions section in 18VAC5-22-10 as the first section, it only points the reader to the definitions in § 54.1-4400. The Board believes that in general a glossary is only needed for terms that are used pervasively throughout the statutes and regulations and that terms with limited use can be defined in the text. The supplement provides a detailed analysis of the changes needed to the definitions in the current regulations on pages 5 through 16.

4. **Licensing Terminology.** The 2007 revisions to the statutes were under the general umbrella of licensing, either of persons or firms. The revised statutes therefore prescribe the licensing requirements for persons and the licensing requirements for firms, using the term “license” for both rather than using different terms. This better conveys the point that the Board is primarily about licensing. The current regulations take a different approach, generally using the term “CPA certificate” when talking about licenses for persons and “registration certificate” when talking about licenses for firms. Deletions to the current regulations just to conform the licensing terminology are pervasive.

5. **Licensing Categories.** The 2007 revisions to the statutes provide the framework for all the licensing requirements of persons and firms. The Board believes the revised statutes provide all the information needed and the following sections of the current regulations are no longer needed:

- a. 18 VAC 5-21-40, which prescribes licensing requirements for persons, and
- b. 18 VAC 5-21-60, which prescribes licensing requirements for firms.

The supplement provides a detailed analysis of the changes to 18VAC5-21-40 on pages 26 through 34, and on pages 37 through 42 provides a detailed analysis of the changes to 18VAC5-21-60.

6. **Standards of Conduct and Practice.** Prior to the 2007 revisions, the statutes referred to standards of conduct and practice but did not define them. Instead, they were defined in the five sections presented as Parts IV, V, and VI of the current regulations. Much of the requirements in those sections are out-of-date. For example, Part V of the current regulations generally only requires compliance with accounting and auditing guidance provided by authoritative sources through 2000.

7. Section 54.1-4413.3 was added to the statutes as part of the 2007 revisions to require compliance with standards of conduct and practice that are tied to guidance provided by

nationally-recognized standard-setting bodies that is regularly updated. That way the standards of conduct and practice remain evergreen and will not require updating. The Board believes the new statute on standards of conduct and practice stands on its own and that Parts IV, V, and VI of the current regulations should be deleted. The supplement provides a detailed analysis of the changes to Parts IV, V, and VI on pages 51 through 62.

A Summary of the Current Regulations That Would Be Replaced with a General Requirement to Comply with the Board's Request for Information

8. Some of the current regulations require licensees to comply with requests by the Board for information, and those regulations would be replaced by the general requirements prescribed by the proposed 18VAC5-22-170. For example, subsection C 2 b of 18VAC5-21-40 of the current regulations, which addresses certain written affirmations, should be deleted. The supplement discusses this subdivision on page 29.

A Summary of the Current Regulations that Were Time-Sensitive and Are No Longer Needed

9. Some of the current regulations were time-sensitive and are no longer needed. For example, subdivisions C 2, C 3 b, and C 4 of 18VAC5-21-30, which generally only applied prior to when the CPA examination became computer-based, should be deleted. The supplement discusses those subdivisions on pages 20 through 23.

A Summary of the Current Regulations that only Refer to Other Regulations and Are Therefore Unnecessary

10. Some of the current regulations only refer to other regulations and are therefore unnecessary. For example, the following current regulations should be deleted:

- a. Subsection E of 18VAC5-21-40. The supplement discusses the subsection on page 30.
- b. The first paragraph of subsection A of 18VAC5-21-50. The supplement discusses the subsection on pages 34 and 35.
- c. Subsection D of 18VAC5-21-60. The supplement discusses the subsection on page 42.
- d. Subsections E and G of 18VAC5-21-80. The supplement discusses the subsections on pages 46 and 47.
- e. Subdivision A 3 of 18VAC5-21-90. The supplement discusses the subdivision on page 49.

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INTRODUCTION

1. The Virginia Board of Accountancy (Board) was established under the former § 54.1-2000 of the Code of Virginia and was reestablished as an independent board by subsection A of § 54.1-4402 of the Code of Virginia. Subsection H of § 54.1-4402 of the Code of Virginia gives the Board the responsibility of enforcing the accountancy statutes and establishing by regulation rules and procedures for the implementation of those statutes.

- a. The accountancy statutes (statutes) are in Chapter 44 (§ 54.1-4400 et seq.) of Title 54.1 of the Code of Virginia.
- b. The Board's regulations (regulations) are in Chapter 21 of Agency 5, Title 18 of the Virginia Administrative Code (18VAC5-21).

2. In October 2004, the Board began a comprehensive reconsideration of the statutes and regulations. The Board spent over two years developing a proposal for the General Assembly to consider.

3. Under the proposal, there would be a comprehensive revision of the statutes, with the overriding objective of putting into place requirements that would be comprehensive, evergreen, and relatively simple to understand. During the 2007 General Assembly session, the proposed revisions to the statutes were approved unanimously by both the Senate and the House of Delegates. They were signed into law by Governor Kaine in March 2007 and became effective July 1, 2007.

4. The comprehensive 2007 revisions to the statutes have two pervasive effects on the current regulations: some new regulations are needed, and most of the current regulations are no longer needed. In May 2007, the Board began developing proposed changes to the regulations to eliminate the deficiencies by replacing the current regulations with new regulations. The Board worked closely with the Virginia Society of Certified Public Accountants, whose members comprise over a third of the approximately 22,500 persons who hold a Virginia license.

5. The Board was initially advised internally to propose these changes through the regular regulatory process. However, in the summer of 2008, primarily because of changes in how the CPA examination is administered in Virginia and in other states, it became apparent that one of the proposed changes should be submitted as an emergency regulation. Since that proposed change related to the amount of education a person needs to obtain prior to taking one or more parts of the CPA examination, the Board worked closely with educators in developing the change to be proposed as an emergency regulation.

6. In December 2008, the Board had ready for submission into the regulatory process a Form TH-05 for the proposed emergency regulation and a Form TH-02 for all of the proposed new regulations, including the proposed emergency regulation. Because the proposed new regulations in the Form TH-02 included the proposed emergency regulation, the Board was

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advised by the Department of Planning and Budget (DPB) to delay submission of the Form TH-02 until the emergency regulation was approved. The emergency regulation was not approved until May 13, 2009. (It became effective May 14, 2009.)

7. By the time the emergency regulation was approved, it had become apparent that the deficiencies in the current regulations were causing considerable confusion among licensees and the public over how to apply the requirements of the statutes and the regulations. The staff and executive committee of the Virginia Society of Certified Public Accountants informed members of the Board that they have received a significant number of inquiries. The staff and members of the Board have also received inquiries directly. As an illustration of the confusion, an ethics course given in December 2009 by a well-established vendor included case studies that required participants to decide how to apply certain regulations. However, neither the instructor nor the handout material recognized that those regulations are now overridden by the statutes.

8. Confusion among licensees and the public over how to apply the requirements of the statutes and regulations increases the risk of noncompliance and the time required to assess and enforce compliance. By the time the emergency regulation was approved, almost two years had passed since the revisions to the statutes became effective. Submitting the Form TH-02 could have delayed eliminating the deficiencies in the current regulations for another two years. Therefore, the Board did not submit the Form TH-02 but instead began investigating whether most or all of the changes that were proposed in the Form TH-02 could be submitted through the fast track regulatory process.

9. The Board believes the changes to the regulations it proposes through the fast track regulatory process should—

1. remove regulations that are now addressed by the statutes,
2. add the emergency regulation that became effective May 14, 2009,
3. add interpretations required as a result of the 2007 revisions to the statutes,
4. clarify the existing guidance that continues to be applicable, and
5. eliminate the current regulations that were time-sensitive and are no longer needed and the current regulations that only refer to other regulations.

Changes that conform with these criteria can only have a positive economic effect. By eliminating the current deficiencies, the risk of noncompliance and the time required to assess compliance will be reduced. No negative economic effects are anticipated.

10. Two of the changes that were proposed in the Form TH-02 do not meet the criteria in paragraph 9—eliminating the exemption from the requirement to obtain continuing professional education that is currently available for persons who hold a Virginia license and do not provide

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services covered by the statutes and changing the amount of continuing professional education obtained from preparing for and making presentations and from writing that can be considered in determining whether the holder of a Virginia license has complied with the continuing professional education requirements. At its July 1, 2009, meeting, the Board approved proposing through the fast track regulatory process the changes to the regulations that were proposed in the Form TH-02 other than the two changes that do not meet the criteria in paragraph 9 and making any changes needed to clarify the Board's intent. The Board also approved proposing in a future Form TH-02 the two changes that were proposed in the December 2008 Form TH-02 but are not being proposed in the Form TH-04.

11. The changes to the regulations proposed in the Form TH-02 were revised accordingly and the revised new regulations were reviewed with DPB and the Office of the Governor. On October 8, 2009, the Office of the Governor gave its initial approval of proposing the new regulations through the fast track regulatory process. Accordingly, a Form TH-04 was drafted. Consistent with the approach taken in the Form TH-02, the Form TH-4 proposes to:

- a. Delete all the current regulations from Chapter 21 and repeal the chapter itself.
- b. Establish a new Chapter 22 and add the proposed new regulations to it.

12. Although there had been no substantive changes to the proposed new regulations since the Board's July 1, 2009, meeting and since the Office of the Governor's initial approval on October 8, 2009, there had been some clarifying changes. At its November 24, 2009, meeting, the Board approved the final wording of the proposed new regulations that appears in the Form TH-04. On December 17, 2009, the Office of the Governor reviewed that wording and gave its final approval of proposing the new regulations through the fast track regulatory process. The Virginia Society of Certified Public Accountants is submitting a letter expressing its support of the proposed new regulations.

13. The Form TH-04 has two sections—the basic form and a supplement:

- a. The basic form provides explanations of the proposed changes to the regulations.
- b. The level of detail in the basic form is likely to be helpful for most members of the public evaluating the proposed changes. However, DPB requested that a more detailed explanation be prepared for its use. In case some members of the public want more detailed explanations, the detailed analysis requested by DPB is included in the Form TH-04 as this supplement.

14. This supplement first provides detailed explanations of the deletion of each of current regulations in Chapter 21. Deleted regulations are ~~struck out~~, and the explanations for the deletions are shown as observations in *italics*. The supplement then presents Chapter 22 as it would look if the proposed new regulations were approved. Since all of the text of Chapter 22 would be new, it is presented in the supplement without special markings such as underlining.

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Each of the proposed new regulations that would be in Chapter 22 is accompanied by explanations shown in *italics*. References introduced by “§” or “section” in the explanations for the proposed deletions to Chapter 21 and the proposed additions to Chapter 22 are citations to the Code of Virginia.

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**CHAPTER 21
BOARD OF ACCOUNTANCY REGULATIONS
Part 1
Definitions and Fees**

~~18 VAC 5-21-10. Definitions.~~ *[Observation: As a result of the 2007 revisions, § 54.1-4400 contains all the definitions the Board believes are necessary. Therefore, the Board believes there is no need for a separate definitions section in the regulations. In addition, the revisions significantly changed most of the definitions that were in the former statutes and the current regulations. The Board proposes to replace the current 18VAC5-21-10 with 18VAC5-22-10, which would serve as a placeholder in case future definitions are needed, is entitled “Definitions,” and says—*

The definitions in § 54.1-4400 of the Code of Virginia apply to these regulations.]

~~The following words and terms when used in this chapter have the following meanings, unless the context clearly indicates otherwise:~~

~~“Accredited institution” means any degree-granting college or university accredited at the time of the applicant’s degree or attendance by any of the following: Middle States Association of Colleges and Schools, New England Association of Schools and Colleges, North Central Association of Colleges and Schools, Northwest Association of Schools and Colleges, Southern Association of Colleges and Schools, and Western Association of Schools and Colleges.~~ *[Observation: The term “accredited institution” is defined in § 54.1-4400. That definition is intentionally broader than the definition in the current regulations because it does not limit accreditation to the six major regional accrediting organizations listed in the current regulations:*

“Accredited institution” means a degree-granting college or university accredited either by (i) one of the six major regional accrediting organizations—Middle States Association of Colleges and Schools, New England Association of Schools and Colleges, North Central Association of Colleges and Schools, Northwest Commission on Colleges and Universities, Southern Association of Colleges and Schools, and Western Association of Schools and Colleges—or their successors, or (ii) an accrediting organization demonstrating to the Board periodically, as prescribed by the Board, that its accreditation process and standards are substantially equivalent to the accreditation process and standards of the six major regional accrediting organizations.

To address how an accrediting organization can meet the requirements of the last part of the definition, the Board is proposing 18VAC5-22-60, which is entitled “Determining whether a college or university is an accredited institution:”

- A. *For the purpose of complying with subdivision A 1 a of § 54.1-4409.2 of the Code of Virginia, a college or university that is not accredited by one of the six major regional*

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accrediting organizations listed in the definition of “accredited institution” in § 54.1-4400 of the Code of Virginia or their successors shall be considered an accredited institution if it is accredited by an accrediting organization recognized by The Council on Higher Education Accreditation (CHEA) or its successor. Publication of the name of the accrediting organization by CHEA or its successor shall be sufficient notification that the accrediting organization is recognized by CHEA or its successor.

- B. To determine whether a college or university is an accredited institution if it is accredited by an accrediting organization that is neither one of the six major regional accrediting organizations or their successors, nor an accrediting organization recognized by CHEA or its successor, representatives of the accrediting organization shall meet with a task force appointed by the Board to study and recommend to the Board how the organization shall demonstrate that its accreditation process and standards are substantially equivalent to the accreditation process and standards of the six major regional accrediting organizations or their successors. The size and composition of the task force shall depend on the facts and circumstances. However, at least one of the members of the task force shall have substantial experience with the accreditation process and standards of the six major regional accrediting organizations or their successors.*

After the task force provides its recommendations to the Board, the Board shall decide what the requirements shall be to demonstrate that the accreditation process and standards of the accrediting organization are substantially equivalent to the accreditation process and standards of the six major regional accrediting organizations or their successors and shall communicate its decision to the organization. The organization shall then provide the required documentation to the Board that will enable the Board to decide whether a college or university accredited by the organization is an accredited institution as defined in § 54.1-4400 of the Code of Virginia.]

~~“Assurance” means any act or action, whether written or oral, expressing an opinion or conclusion about the reliability of a financial statement or about its conformity with any financial accounting principles or standards. [Observation: This definition is not correct. For example, assurance in the context of the practice of public accounting (which is defined in § 54.1-4400) is expressed about conformity rather than about reliability. The term “assurance” is defined in § 54.1-4400:~~

"Assurance" means any form of expressed or implied opinion or conclusion about the conformity of a financial statement with any recognition, measurement, presentation, or disclosure principles for financial statements.]

~~“Audit” means expressing an opinion about the fairness of presentation of financial statements in accordance with prescribed criteria. [Observation: A definition of “audit” is not needed. That type of engagement is a form of attest services, which is defined in § 54.1-4400:~~

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“Attest services” means audit, review, or other attest services for which standards have been established by the Public Company Accounting Oversight Board, by the Auditing Standards Board or the Accounting and Review Services Committee of the American Institute of Certified Public Accountants, or by any successor standard-setting authorities.]

~~“Board” means the Board of Accountancy. [Observation: The definition of “Board” in § 54.1-4400 uses the formal name of the Board: “Board” means the Virginia Board of Accountancy.]~~

~~“Certify,” “audit,” “examine,” “review,” or “express or disclaim an opinion,” when referenced to financial information or the practice of public accountancy, are terms which, when used in connection with the issuance of reports, state or imply assurance of conformity with generally accepted accounting principles, generally accepted auditing standards, and review standards. The terms include forms of language disclaiming an opinion concerning the reliability of the financial information referred to or relating to the expertise of the issuer. [Observation: This definition is not correct. For example, a disclaimer of opinion does not state or imply conformity of the financial statements with a basis of accounting. The definition is also not relevant. Section 54.1-4400 defines “attest services,” which encompass services in which assurance is expressed or disclaimed, and subdivision 5 of § 54.1-4414 prescribes the terms that can only be used by a licensee. The definition of “attest services” in § 54.1-4400 is shown in the observation about the definition of “audit” in the current regulations.]~~

~~“Client” means a person or entity that contracts with or retains a firm for performance of services by a CPA certificate holder or registration certificate holder subject to Chapter 44 (§ 54.1-4400 et seq.) of Title 54.1 of the Code of Virginia and this chapter. [Observation: The statutes do not use the term “client” to describe a person or entity to whom services are provided. Therefore, the proposed new regulations do not need to use the term, and a definition of “client” is not needed.]~~

~~“Commission” means compensation generated from the purchase or sale of a product or service and which would not be generated but for the purchase or sale of the product or service. [Observation: The term “commission” is not used in the statutes, and there is no need to discuss commissions in the proposed new regulations. Subdivision 4 of § 54.1-4413.3 requires the licensee to follow “the Code of Professional Conduct, and the related interpretive guidance, issued by the American Institute of Certified Public Accountants, or any successor standard-setting authorities,” which provide guidance on whether a CPA can accept commissions.]~~

~~“Conditional CPA exam credit” means credit for successfully passing a section of the CPA exam. [Observation: Conditional CPA exam credits are only discussed in the current regulations in subdivision C 3 b of 18VAC5-21-30, and that discussion is in the context of the CPA examination before it was computer-based. Since the CPA examination is now computer-based, the term “conditional CPA exam credit” is irrelevant. As the analysis of 18VAC5-21-30 below discusses, the Board is proposing to delete all the discussion of the CPA examination before it was computer-based that is in subdivisions C 2 and C 3 b of 18VAC5-21-30 since it was time-sensitive and is therefore no longer needed.]~~

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~~“Contact hour” means 50 minutes of participation in a group program or 50 minutes of average completion time in a self-study program. [Observation: The statutes do not use the term “contact hour.” The proposed 18VAC5-22-90, which is entitled “Continuing professional education,” also does not use the term “contact hour” but instead discusses the amount of continuing professional education needed in terms of “hours.” The Board does not believe it is necessary to define an “hour of continuing professional education” because it is generally accepted that an hour of continuing professional education consists of 50 minutes. For example, the Statement on Standards for Continuing Professional Education (CPE) Programs, which was jointly approved by the American Institute of Certified Public Accountants and the National Association of State Boards of Accountancy, discusses an hour of continuing professional education in terms of 50 continuous minutes. As an observation, not defining an “hour of continuing professional education” is consistent with the Board’s goal of keeping the statutes and regulations evergreen. If the generally accepted practice changes to look at an hour of continuing professional education in terms of a different number of minutes, the Board will not need to change the regulations.]~~

~~“Contingent fee” means a fee established for the performance of a service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is obtained, or in which the amount of the fee is dependent upon the finding or result obtained. Fees shall not be considered contingent if fixed by courts or other public authorities, or in tax matters if determined based on the results of judicial proceedings or the findings of governmental agencies. A CPA certificate holder’s fees may vary depending on the complexity of services rendered, and such variation shall not be considered a contingent fee. [Observation: The term “contingent fee” is not used in the statutes, and there is no need to discuss contingent fees in the proposed new regulations. Subdivision 4 of § 54.1-4413.3 requires the licensee to follow “the Code of Professional Conduct, and the related interpretive guidance, issued by the American Institute of Certified Public Accountants, or any successor standard-setting authorities,” which provide guidance on whether a CPA can provide services for a contingent fee.]~~

~~“Continuing Professional Education (CPE)” means an integral part of the lifelong learning required to provide competent service to the public; the formal set of activities that enables accounting professionals to maintain and increase their professional competence. [Observation: This definition is not correct. For example, it only describes the purpose of continuing professional education in terms of providing services to the public and does not address providing services to an employer. The term “continuing professional education” is defined in § 54.1-4400:~~

“Continuing professional education” means the education that a person obtains after passing the CPA examination and that relates to services provided to an employer in academia, government, or industry using the CPA title or to services provided to the public using the CPA title.]

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~~“CPA certificate” means a certificate as a certified public accountant (CPA) issued by the board pursuant to Chapter 44 (§ 54.1-4400 et seq.) of Title 54.1 of the Code of Virginia and this chapter, which shall function as a license, or a corresponding certificate as a certified public accountant issued after meeting the CPA exam and other requirements under the laws of any other state. [Observation: As a result of the 2007 revisions to the statutes, there is no longer a CPA certificate.]~~

~~“CPA exam” means the National Uniform CPA exam approved and administered by the Board of Accountancy to candidates for a CPA certificate. [Observation: This definition is not correct. For example, “National Uniform” is not part of the name of the examination, and it may be administered by boards of accountancy of other states or by designees. Section 54.1-4400 defines the term: “CPA examination” means the national uniform CPA examination approved and administered by the board of accountancy of a state or by the board’s designee.]~~

~~“CPA wall certificate” means the symbolic document suitable for wall display that is issued by the board to an individual meeting the requirements for a CPA certificate set forth in 18 VAC 5-21-30. [Observation: Section 54.1-4400 defines “using the CPA title in Virginia,” which includes using the CPA wall certificate:]~~

~~“Using the CPA title in Virginia” means using “CPA,” “Certified Public Accountant,” or “public accountant” (i) in any form or manner of verbal communication to persons or entities located in Virginia or (ii) in any form or manner of written communication to persons or entities located in Virginia, including but not limited to the use in any abbreviation, acronym, phrase, or title that appears in business cards, the CPA wall certificate, Internet postings, letterhead, reports, signs, tax returns, or any other document or device.~~

~~The Board believes what constitutes a CPA wall certificate is generally understood, and a definition is not needed.]~~

~~“CPE” means continuing professional education. [Observation: This acronym is not used in the statutes or the proposed new regulations and therefore does not need to be defined. The statutes and the proposed new regulations use the formal term “continuing professional education” rather than the informal term “CPE.”]~~

~~“CPE credit” means 50 minutes of participation in a group, independent study or self-study program. [Observation: The statutes do not use the term “CPE credit.” The proposed 18VAC5-22-90, which is entitled “Continuing professional education,” also does not use the term “CPE credit” but instead discusses the amount of continuing professional education needed in terms of “hours.” As discussed in the observation for deleting the definition of “contact hour” in the current regulations, the Board does not believe it is necessary to define an “hour of continuing professional education” because it is generally accepted that an hour of continuing professional education consists of 50 minutes. For example, the Statement on Standards for Continuing Professional Education (CPE) Programs, which was jointly approved by the American Institute~~

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of Certified Public Accountants and the National Association of State Boards of Accountancy, discusses an hour of continuing professional education in terms of 50 continuous minutes. Not defining an “hour of continuing professional education” is also consistent with the Board’s goal of keeping the statutes and regulations evergreen. If the generally accepted practice changes to look at an hour of continuing professional education in terms of a different number of minutes, the Board will not need to change the regulations.]

“~~CPE reporting year~~” means for the purposes of this chapter a calendar year. [Observation: The statutes do not use the term “CPE reporting year.” The proposed 18VAC5-22-90, which is entitled “Continuing professional education,” also does not use the term “CPE reporting year” but instead discusses the amount of continuing professional education needed in terms of calendar years and three-calendar-year periods.]

“~~CPE reporting cycle~~” means the three CPE reporting years immediately preceding the year the CPA certificate is renewed pursuant to 18 VAC 5-21-80. [Observation: The statutes do not use the term “CPE reporting cycle.” The proposed 18VAC5-22-90, which is entitled “Continuing professional education,” also does not use the term “CPE reporting cycle” but instead discusses the amount of continuing professional education needed in terms of calendar years and three-calendar-year periods.]

“~~Ethics CPE~~” means subjects relating to standards of conduct, Chapter 44 (§ 54.1-4400 et seq.) of Title 54.1 of the Code of Virginia, and regulations of the Board. [Observation: The statutes intentionally do not prescribe an ethics course. The Board believes there is a reasonable possibility that at some point there will no longer be a need for a separate ethics course and wants to be able to change the requirement without revising the statutes. The proposed 18VAC5-22-90, which is entitled “Continuing professional education,” requires an ethics course but does not define it or prescribe its subject matter. This enables the requirement for an ethics course to remain evergreen. For example, the definition in the current regulations requires the course to include discussion of the statutes and regulations, but the Board no longer believes they should be a standing topic.]

“~~Examination~~” means, when used in the context of services provided by CPAs, expressing an opinion about the fairness of presentation of financial information in accordance with prescribed criteria. [Observation: This definition is not correct. For example, an “examination” may not result in the expression of an opinion, and it may result in the expression of an opinion on nonfinancial information. However, an “examination” is an attest service and does not need to be separately defined because it is encompassed in the definition of “attest services” provided by § 54.1-4400. The definition of “attest services” in § 54.1-4400 is shown in the observation on the definition of “audit” in the current regulations.]

“~~Financial statement~~” means writing or other presentation, including accompanying notes, which presents, in whole or in part, historical or prospective financial position, results of operations or changes in financial position of any person, corporation, partnership or other entity. [Observation: This definition is not correct. For example, a financial statement may exclude

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disclosures customarily presented in the form of notes, and, under generally accepted accounting principles, the concept of “changes in financial position” has been replaced by the concept of “changes in cash flows.” Section 54.1-4400 defines “financial statement:”

“Financial statement” means a presentation of historical or prospective financial information about one or more persons or entities.]

~~“Firm” means a sole proprietorship, partnership, corporation, limited liability company, limited liability partnership, or any other form of organization permitted by law. [Observation: This definition does not acknowledge that the notion of a firm is only relevant in the statutes and regulations in the context of an entity formed by one or more licensees. Section 54.1-4400 defines “firm:”~~

“Firm” means an entity formed by one or more licensees as a sole proprietorship, a partnership, a corporation, a limited liability company, or any other type of entity permitted by law.

~~“Good character” means a lack of a history of dishonest or felonious acts. [Observation: The notion of a person’s character was only discussed in the statutes prior to the 2007 revisions in the context of issuing a “CPA certificate.” It is only discussed in the current regulations in that context. The Board believes it cannot deny a person a license just because he has a history of dishonest or felonious acts. For example, § 54.1-4419 of the statutes prior to the 2007 revisions, which was entitled “prior convictions not to abridge rights,” said:~~

A person shall not be refused a license to practice, pursue, or engage in public accountancy solely because of a prior criminal conviction, unless the criminal conviction directly relates to the practice of public accountancy. However, the Board shall have the authority to refuse a license if, based upon all the information available, including the applicant's record of prior convictions, it finds that the applicant is unfit or unsuited to engage in the practice of public accountancy.

The Board believes the notion of whether a criminal conviction “directly relates to the practice of public accountancy” is nebulous. For example, does misappropriation of financial assets always relate to the practice of public accountancy or only when the misappropriation was committed by a person involved with an entity’s accounting system? Accordingly, § 54.1-4409.2 does not prescribe “character” as a requirement for obtaining a Virginia license, but subdivisions A 2, B 2, and C 2 of § 54.1-4409.2 provide the general caveat that:

After evaluating information provided by the person, the Board may request additional information and may impose additional requirements for obtaining a Virginia license.]

~~“Group program” means an educational process designed to permit a participant to learn a given subject through interaction with an instructor and other participants. [Observation: The statutes do not use the term “group program.” The proposed 18VAC5-22-90, which is entitled~~

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“Continuing professional education,” also does not use the term “group program” but instead discusses acceptable forums for obtaining continuing professional education using generally accepted terms such as “seminars”, “educational conferences,” and “courses at an accredited institution.”]

~~“Interactive self-study program” means a program using interactive learning methodologies simulating a classroom learning process by employing software, other courseware, or administrative systems and providing significant ongoing, interactive feedback to the learner regarding his learning process. Substantial written or electronic evidence of satisfactory completion of each program segment by the learner is required. Interactive self-study programs must clearly define lesson objectives and manage students through the learning process by requiring frequent student response to questions that test for understanding of the material presented, providing evaluative feedback to incorrectly answered questions, and providing reinforcement feedback to correctly answered questions. Capabilities must, based on student response, provide appropriate ongoing written or electronic format feedback to the student regarding his learning progress through the program.~~ *[Observation: The statutes do not use the term “interactive self-study program.” The proposed 18VAC5-22-90, which is entitled “Continuing professional education,” also does not use the term “interactive self-study program” but instead says that acceptable forums for obtaining continuing professional education include “self-study courses, provided there is a method for determining that the person met the learning objectives.”]*

~~“Noninteractive self-study program” means any self-study program that does not meet the criteria for interactive self-study programs.~~ *[Observation: The statutes do not use the term “noninteractive self-study program.” The proposed 18VAC5-22-90, which is entitled “Continuing professional education,” also does not use the term but instead says that acceptable forums for obtaining continuing professional education include “self-study courses, provided there is a method for determining that the person met the learning objectives.”]*

~~“Original CPA certificate” means a CPA certificate issued by the board other than a CPA certificate by endorsement.~~ *[Observation: As a result of the 2007 revisions to the statutes, there is no longer a CPA certificate. In addition, § 54.1-4409.2 does not use the notion of “original” when addressing how a person may obtain a Virginia license. For example, subsection A of § 54.1-4409.2 addresses how a “person who has not held the license of any state” may obtain a Virginia license.]*

~~“Peer review” means a study, appraisal, or review, by a CPA certificate holder who is not affiliated with the firm being reviewed, of one or more aspects of the professional work of a firm that engages in the practice of public accounting or compiles financial statements in accordance with the American Institute of Certified Public Accountants’ Statements on Standards for Accounting and Review Services (SSARS).~~ *[Observation: Subdivision D 6 of § 54.1-4412.1 requires a firm to “be enrolled in the applicable monitoring program of the American Institute of Certified Public Accountants or its successor, or in another monitoring program for attest*

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services and compilation services that is approved by the Board.” Peer review is a part of a monitoring program, and § 54.1-4400 defines “peer review” as:

a review of a firm's attest services and compilation services that is conducted in accordance with the applicable monitoring program of the American Institute of Certified Public Accountants or its successor, or with another monitoring program approved by the Board.

An additional definition in the regulations is unnecessary.]

~~“Practice of public accountancy” or “public accounting” means the giving of an assurance, in a report or otherwise, whether expressly or implicitly, unless this assurance is given by an employee to his employer. [Observation: This definition is not correct. For example, it does not recognize that the giving of assurance by a person whose financial information is presented does not constitute the practice of public accounting. Section 54.1-4400 defines the “practice of public accounting:”~~

“Practice of public accounting” means the giving of an assurance other than (i) by the person or persons about whom the financial information is presented or (ii) by one or more owners, officers, employees, or members of the governing body of the entity or entities about whom the financial information is presented.]

~~“Practice of taxation” means the providing of tax compliance and tax advice services. [Observation: This term is not used in the statutes and in the proposed new regulations and does not need to be defined. It was also not used in the statutes prior to the 2007 revisions, and it is not used in the current regulations.]~~

~~“Registration” means the process through which a firm obtains a registration certificate from the board. [Observation: As a result of the 2007 revisions to the statutes, there is no longer a registration certificate, and the notion of “registration” is no longer relevant.]~~

~~“Registration certificate” means a certificate issued to a firm that has met all of the requirements for registration under this chapter. [Observation: As a result of the 2007 revisions to the statutes, there is no longer a registration certificate.]~~

~~“Regulant” means any CPA certificate holder or registration certificate holder who is subject to Chapter 44 (§ 54.1-4400 et seq.) of Title 54.1 of the Code of Virginia and this chapter. [Observation: The statutes do not use the term “regulant” and instead use the term “licensee,” which § 54.1-4400 defines as: a person or firm holding a Virginia license or the license of another state.]~~

~~“Renewal month” means the month of the calendar year in which a firm is required to renew its registration certificate. [Observation: The statutes do not use the term “renewal month” and instead refer to 12-month periods. For example, subsection A of § 54.1-4413.2 says a “Virginia license shall provide its holder with a 12-month privilege to use the CPA title in Virginia or~~

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*provide attest services and compilation services to persons and entities located in Virginia.”
The notion of a “renewal month” is therefore no longer relevant.]*

~~“Report” or “reports,” when used with reference to financial statements, means an opinion or disclaimer of opinion or other form of language or representation that states or implies any form of assurance or denial of assurance. [Observation: This is not correct. For example, an officer of an entity could express assurance on financial information without being subject to the statutes or regulations. The definition also is not relevant. The statutes prescribe requirements for services provided, including how to report on those services. For example, § 54.1-4400 defines “attest services” as:~~

audit, review, or other attest services for which standards have been established by the Public Company Accounting Oversight Board, by the Auditing Standards Board or the Accounting and Review Services Committee of the American Institute of Certified Public Accountants, or by any successor standard-setting authorities.

In addition, subdivision 5 of § 54.1-4413.3 requires the licensee to—

Follow the technical standards, and the related interpretive guidance, issued by committees and boards of the American Institute of Certified Public Accountants that are designated by the Council of the American Institute of Certified Public Accountants to promulgate technical standards, or that are issued by any successor standard-setting authorities.

Those sources provide both performance and reporting standards.]

~~“Self-study program” means an educational process designed to permit a participant to learn a given subject without major involvement of an instructor. Self-study programs do not include informal learning. [Observation: The statutes do not use the term “self-study program.” The proposed 18VAC5-22-90, which is entitled “Continuing professional education,” also does not use the term “self-study program” but instead says that acceptable forums for obtaining continuing professional education include “self-study courses, provided there is a method for determining that the person met the learning objectives.”]~~

~~“SSARS” means Statements on Standards for Accounting and Review Services established by the American Institute of Certified Public Accountants. [Observation: This acronym is not used in the revised statutes or the proposed new regulations and therefore does not need to be defined.]~~

~~“Standards of conduct” means the standards set forth in 18 VAC 5-21-120. [Observation: Section 54.1-4413.3 prescribes the standards of conduct and practice. Thus, defining them in the regulations is unnecessary.]~~

~~“Standards of practice for CPA certificate holders” means the standards set forth in 18 VAC 5-21-130, 18 VAC 5-21-140 and 18 VAC 5-21-150. [Observation: Section 54.1-4413.3 prescribes~~

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the standards of conduct and practice. Thus, defining them in the regulations is unnecessary. In addition, as a result of the 2007 revisions to the statutes, there is no longer a CPA certificate.]

~~“State” means any state of the United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands and Guam. [Observation: Section 54.1-4400 provides an up-to-date definition:~~

“State” means any state of the United States, the Commonwealth of the Northern Mariana Islands, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands.]

~~“Substantial equivalency” means a determination by the board or its designee that the education, CPA exam and experience requirements contained in the statutes and administrative rules of another jurisdiction are comparable to, or exceed, the education, CPA exam and experience requirements contained in this chapter, or that an individual CPA from another jurisdiction has met education, CPA exam and experience requirements that are comparable to, or exceed, the education, CPA exam, and experience requirements contained in Chapter 44 (§ 54.1-4400 et seq.) of Title 54.1 of the Code of Virginia and this chapter. [Observation: Section 54.1-4400 does not define “substantial equivalency.” Instead, subsection A of § 54.1-4411 addresses how a person who holds the license of another state shall be considered to have met requirements that are substantially equivalent to those prescribed by the Board:~~

A person who holds the license of another state shall be considered to have met requirements that are substantially equivalent to those prescribed by the Board if:

- 1. The Board has determined that the education, CPA examination, and experience requirements of the state are substantially equivalent to those prescribed by the Board, or*
- 2. The person has demonstrated meeting education, CPA examination, and experience requirements that are substantially equivalent to those prescribed by the Board.*

Defining “substantial equivalency” in the regulations is unnecessary.]

~~“Window” means the four times (each being a three-month period) in a year that a CPA candidate may take the computer-based CPA exam. [Observation: The statutes do not use the term “window,” and the current regulations only use the term once, in subdivision C 3 a (2) of 18VAC5-21-30. Subdivisions A 3 and A 4 of the proposed 18VAC5-22-80, which is entitled “Examination,” provide a clear discussion without using the term “window:”~~

- A person who fails a section of the CPA examination may not retake that section until the next quarter of the calendar year.*
- When a person first passes a section of the CPA examination, he has 18 months to pass the remaining sections. If the remaining sections are not passed within the 18-month period, the person loses credit for the first section passed, and a new 18-month period starts with the next section passed.]*

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~~“Year” means a calendar year unless otherwise indicated.~~ [Observation: The statutes do not define “year” because sections of the statutes that discuss time periods are clear as to the period covered. For example, § 54.1-4413.2 uses the term “12-month period” rather than “year.” The proposed new regulations are similarly clear. For example, subsections A and B of the proposed 18VAC5-22-90, which is entitled “Continuing professional education,” use the terms “calendar year” and “three-calendar-year period.”]

~~18 VAC 5-21-20. Fees.~~ [Observation: The Board is not proposing fee increases through the fast track regulatory process. However, revisions are necessary to conform with the language of the revised statutes and to eliminate unnecessary parts of 18VAC5-21-20. The proposed 18VAC5-22-20, which is entitled “Fees,” follows.

A. The Board, which § 54.1-4400 of the Code of Virginia defines as the Virginia Board of Accountancy, shall charge the following fees for services it provides:

- Processing an application to take the CPA examination \$ 120
- Processing an application for issuance of a Virginia license 24
- Processing an application for the timely renewal of a Virginia license 24
- Additional fee for processing an application for a license renewal that is not timely 25
- Processing an application for reinstatement of a Virginia license 250
- Processing an application for lifting the suspension of the privilege of using the CPA title in Virginia or for lifting the suspension of the privilege of providing attest services or compilation services for persons or entities located in Virginia 250
- Providing an additional CPA wall certificate 25
- Additional fee for not using the online payment option for any service provided by the Board 5

B. All fees for services the Board provides are due when the service is requested and are nonrefundable.

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~~A. All fees are nonrefundable. [Observation: This is in subsection B of the proposed 18VAC5-22-20.] and the date of receipt by the board or its agent is the date that will be used to determine whether it is on time. [Observation: The Board believes what constitutes date of receipt is an administrative procedure that does not need to be addressed in the regulations.]~~

~~B. The following fees shall apply: [Observation: The fee amounts in the proposed 18VAC5-22-20 are the same, but the terminology is different. The references in the marked table that follows are to subsection A of the proposed 18VAC5-22-20.]~~

Examination administration fee	\$120 [The first bullet applies.]
Original CPA certificate application	\$24 [The second bullet applies.]
CPA certificate by endorsement application	\$24 [The second bullet applies.]
Registration certificate application	\$24 [The second bullet applies.]
CPA certificate renewal	\$24 [The third bullet applies.]
Registration certificate renewal	\$24 [The third bullet applies.]
CPA certificate late renewal	\$25 [The fourth bullet applies.]
Registration certificate late renewal	\$25 [The fourth bullet applies.]
CPA certificate reinstatement	\$250 [The fifth bullet applies.]
Registration certificate reinstatement	\$250 [The fifth bullet applies.]
Noninteractive processing fee	\$5 [The eighth bullet applies.]

~~If the renewal fee is not received by the board within 30 days after the expiration date printed on the CPA certificate or the registration certificate, [Observation: Subsection B of the proposed 18VAC5-22-20 says “all fees for services the Board provides are due when the service is requested.”] the regulant shall pay the renewal and the late renewal fees. [Observation: the fourth bullet of subsection A of the proposed 18VAC5-22-20—“additional fee for a license renewal that is not timely”—is clear that an additional fee is due if renewal is not timely.] Regulants applying for reinstatement shall pay all unpaid renewal fees in addition to the late renewal and the reinstatement fees. [Observation: As discussed in the observation to subdivision A 6 of 18VAC5-21-90, this is no longer correct. Under subsection C of § 54.1-4413.2, a license is considered to have expired if it is not renewed by the end of the additional 12-month period, and the person or firm is considered to no longer hold a Virginia license. Renewal is no longer an option once a license has expired, and therefore there are no “unpaid renewal fees” after a license has expired. Subsections E and F of § 54.1-4413.2 prescribe the requirements for having an expired license reinstated.]~~

~~C. The late filing fee for CPA certificate holders who fail to complete or report their CPE as required by this chapter shall be:~~

- ~~1. If received by the board up to four months late, \$25.~~
- ~~2. If received by the board more than four months late but not more than six months late, \$50.~~

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~~3. If received by the board more than six months late, \$75.~~

[Observation: This is no longer relevant because licensees are not required to submit reports on their continuing professional education. Instead, when licensees apply for renewal of their license, they are required to state whether they are in compliance with the continuing professional education requirements.]

~~D. The fee for a replacement wall certificate shall be \$25. [Observation: The seventh bullet of subsection A of the proposed 18VAC5-22-20 addresses the fee for additional or replacement wall certificates.]~~

~~E. A fee of \$25 will be charged in addition to the fees established in this section for submitting a check to the board which is dishonored by the institution upon which it is drawn. [Observation: Section 2.2-4805 gives all state agencies the authority to impose bad check charges within guidelines adopted by the Department of Accounts. Therefore, there is no need to address bad check charges in the regulations. (As an observation, the bad check charge was increased to \$50 effective July 1, 2009, which is higher than the \$25 charge prescribed by 18VAC5-21-20.)]~~

~~F. A noninteractive processing fee will be assessed when online payment option is not chosen by the applicant or regulant. [Observation: The last bullet of subsection A of the proposed 18VAC5-22-20 addresses the \$5 fee using a more concise description: additional fee for not using the online payment option for any service provided by the Board.]~~

~~G. The fee for the CPA exam provided for in 18 VAC 5 21 30 C shall consist of the administration fee that will be assessed at the time of initial application for the CPA exam, but not for reexamination. The Board may contract for examination administration services under the provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia), and that contract shall not include a fee for those services that exceeds \$200. [Observation: The Board does not charge a fee for a person to retake parts of the CPA examination. In addition, the Board believes there is no need for the regulations to address the possibility of engaging another party to process applications to take the CPA examination. The Virginia Public Procurement Act gives the Board that authority, and that authority is not relevant to fees the Board charges. The Board currently processes applications to take the CPA examination. However, if the Board were to engage another party to process the applications, the Board could only charge the fee authorized by the regulations, which is currently \$120, regardless of what the Board would be required to pay the other party to process the applications.]~~

Part II

Entry Requirements for CPA Certificate, Registration Certificate and CPA Supervising Services Involving the Practice of Public Accounting

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~~18 VAC 5-21-30. Qualifications for CPA certificate.~~ *[Observation: As a result of the 2007 revisions to the statutes, there is no longer a CPA certificate. Instead, the “CPA certificate” has been replaced with a “license.”]*

~~A. Each applicant must be a person of good character as defined in 18 VAC 5-21-10.~~

[Observation: The notion of a person’s character was only discussed in the statutes prior to the 2007 revisions in the context of issuing a “CPA certificate.” It is only discussed in the current regulations in that context. The Board believes it cannot deny a person a license just because he has a history of dishonest or felonious acts, which is essentially the definition of “good character” of 18VAC5-21-10 of the current regulations. For example, § 54.1-4419 of the statutes prior to the 2007 revisions, which was entitled “prior convictions not to abridge rights,” said:

A person shall not be refused a license to practice, pursue, or engage in public accountancy solely because of a prior criminal conviction, unless the criminal conviction directly relates to the practice of public accountancy. However, the Board shall have the authority to refuse a license if, based upon all the information available, including the applicant's record of prior convictions, it finds that the applicant is unfit or unsuited to engage in the practice of public accountancy.

The Board believes the notion of whether a criminal conviction “directly relates to the practice of public accountancy” is nebulous. For example, does misappropriation of financial assets always relate to the practice of public accountancy or only when the misappropriation was committed by a person involved with an entity’s accounting system? Accordingly, § 54.1-4409.2 does not prescribe “character” as a requisite for obtaining a Virginia license, but subdivisions A 2, B 2, and C 2 of § 54.1-4409.2 provide the general caveat that:

After evaluating information provided by the person, the Board may request additional information and may impose additional requirements for obtaining a Virginia license.]

~~B. Education.~~ *[Observation: This subsection was approved as an emergency regulation effective May 14, 2009. In the new regulations proposed through the Form TH-04, this regulation appears as 18VAC5-22-70, entitled “Education.” Subdivisions 1 and 2 below appear as subsections A and B, and subdivisions 2 a and 2 b below appear as subdivisions B 1 and B 2 in the proposed 18VAC5-22-70.]*

1. In order for a person to take the CPA examination through Virginia, he must have obtained from one or more accredited institutions or from the National College at least 120 semester hours of education, a baccalaureate or higher degree, and an accounting concentration or equivalent prior to taking any part of the CPA examination.

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2. For the purpose of complying with subdivision B 1 of this subsection and with subdivision A 1 a of § 54.1-4409.2 of the Code of Virginia, obtaining an accounting concentration or equivalent requires obtaining at a minimum:
 - a. 24 semester hours of accounting courses, including courses in auditing, financial accounting, management accounting, and taxation; and
 - b. 24 semester hours of business courses, no more than six semester hours of which could be considered accounting courses.

Principles or introductory accounting courses cannot be considered in determining whether a person has obtained the 48 minimum number of semester hours required for an accounting concentration or equivalent.

~~C. CPA exam. [The proposed new regulations on the CPA and ethics examinations appear in 18VAC5-22-80, which is entitled "Examination."]~~

- ~~1. Each candidate shall pass (i) a national uniform CPA exam, as approved by the board, in auditing and attestation, regulation, business environment and concepts, business law and professional responsibilities, accounting and reporting (taxation, managerial, governmental and not for profit organizations), financial accounting and reporting, and other such related subject areas as deemed appropriate by the board. [Observation: This is no longer needed in the regulations. Section 54.1- 4400 defines "CPA examination," and subsections A, B, and C of § 54.1- 4409.2 require passing the CPA examination in order to obtain a Virginia license.] and (ii) an ethics exam approved by the board. [Observation: Subsection D of the proposed 18VAC5-22-80 prescribes the requirement for passing an ethics examination:~~

~~Prior to being considered for a Virginia license, a person shall pass an ethics examination approved by the Board.]~~

~~Each part of the CPA exam must be passed by attaining a uniform passing grade established through a psychometrically acceptable standard setting procedure approved by the board. [Observation: Subdivision A 1 of the proposed 18VAC5-22-80 prescribes the same requirement:~~

~~Each section of the CPA examination must be passed by attaining a uniform passing grade established through a psychometrically acceptable standard-setting procedure approved by the Board.]~~

- ~~2. The following rules for granting CPA exam credits are applicable until the computer-based CPA exam becomes effective. [This subdivision is no longer applicable because the CPA examination is now computer-based. The subdivision can therefore be deleted.]~~

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- ~~If at a given sitting of the CPA exam a candidate passes two or more but not all sections, then the candidate shall be given credit for those sections that the candidate has passed and need not sit for reexamination in those sections provided the following conditions are met:~~
- ~~a. At that sitting, the candidate wrote all sections of the CPA exam for which the candidate did not have credit;~~
 - ~~b. The candidate attained a minimum grade of 50 on each section taken at that sitting when the first two sections were passed and in each subsequent sitting attains a minimum grade of 50 on all sections taken at that sitting;~~
 - ~~c. The candidate passes the remaining sections of the CPA exam within six consecutive CPA exams (irrespective of the date on which the CPA exam credit was earned) given after the one at which the first sections were passed; and~~
 - ~~d. At each subsequent sitting at which the candidate seeks to pass any additional sections, the candidate writes all sections for which the candidate does not have credit.~~
- ~~3. The following rules for granting CPA exam credits will take effect beginning with the first computer-based CPA exam:~~
- ~~a. Granting of credit.
 - ~~(1) Candidates will be allowed to sit for each section of the CPA exam individually and in any order. [Observation: This appears in subdivision A 2 of the proposed 18VAC5-22-80: Persons may take sections of the CPA examination in any order.]~~
 - ~~(2) Candidates will retain credit for any section(s) passed for 18 months, without having to attain a minimum score on failed sections and without regard to whether they have taken other sections. Candidates will not be allowed to retake a failed section(s) within the same CPA exam window. [Observation: When a failed section can be taken again is addressed in subdivision A 3 of the proposed 18VAC5-22-80:~~

A person who fails a section of the CPA examination may not retake that section until the next quarter of the calendar year.

The 18-month notion is addressed in the next two subdivisions.]

~~(3) Candidates must pass all four sections of the CPA exam within a “rolling” 18-month period, which begins on the date that the first section(s) passed is~~~~

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~~taken.~~ *[Observation: Both this subdivision and the one that follows relate to the “rolling” notion. Subdivision A 4 of the proposed 18VAC5-22-80, which appears in the observation for the next subdivision, retains that notion but describes it more clearly.]*

- ~~(4) In the event all four sections of the CPA exam are not passed within the rolling 18-month period, credit for any section(s) passed outside that 18-month period will expire and that section(s) must be retaken.~~ *[Observation: Both this subdivision and the preceding one relate to the “rolling” notion. Subdivision A 4 of the proposed 18VAC5-22-80 retains that notion but describes it more clearly:*

When a person first passes a section of the CPA examination, he has 18 months to pass the remaining sections. If the remaining sections are not passed within the 18-month period, the person loses credit for the first section passed, and a new 18-month period starts with the next section passed.]

- ~~b. Conditional CPA exam credits.~~ *[Observation: Since the CPA examination is now computer-based, this subdivision is no longer relevant and can be deleted.]*

- ~~(1) Candidates who have earned conditional credits on the noncomputer-based CPA exam as of the date of the first computer-based CPA exam will be given credits for the corresponding sections of the computer-based CPA exam as follows:~~

Noncomputer Based CPA Exam	Computer Based CPA Exam
Auditing	Auditing and Attestation
Financial Accounting and Reporting (FARE)	Financial Accounting and Reporting
Accounting and Reporting (ARE)	Regulation
Business Law and Professional Responsibilities (LPR)	Business Environment and Concepts

- ~~(2) Candidates who have attained conditional status as of the launch date of the first computer-based CPA exam will be allowed a transition period to complete any remaining test sections of the CPA exam. The transition is the maximum number of opportunities that a candidate who has conditioned under the noncomputer-based CPA exam has remaining, at the launch of the computer-based CPA exam, to complete all remaining test sections, or the number of remaining opportunities under the noncomputer-based CPA exam, multiplied by six months, which is first exhausted.~~

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- ~~4. The board may, at its discretion, waive any of the above requirements for carryover CPA exam credits, if such waiver is in the public interest. [Observation: This relates to the conditional credits addressed in the observation to subdivision C 3 b above. It is therefore no longer relevant and can be deleted.]~~
- ~~5. Each candidate shall follow all rules and regulations established by the board with regard to conduct at the CPA exam. Such rules shall include instructions communicated prior to the CPA exam date and instructions communicated at the CPA exam site on the date of the CPA exam. [Observation: Since the consequences of failing to comply are addressed in the next subdivision, this subdivision was unnecessary and can therefore be deleted.]~~
- ~~6. Failure to comply with the rules and regulations governing conduct in the CPA exam may result in the loss of established eligibility to sit for the CPA exam or credit for CPA exam parts passed. [Observation: The consequences of failing to comply are addressed in the first sentence of subsection B of the proposed 18VAC5-22-80:~~

Failure to comply with the policies established by the Board for conduct at the CPA examination may result in the loss of eligibility to take the CPA examination or credit for sections of the CPA examination passed.]
- ~~7. A candidate to sit for the CPA exam shall obtain an application form from the board or its designee, complete the application in accordance with the instructions on the application, and submit the application together with all required documents to the board or its designee by the date determined by the board or its designee. [Observation: The Board believes this is an administrative procedure that does not need to be addressed in the regulations. As explained in the observation to subsection F of 18VAC5-21-80, the proposed 18VAC5-22-170, which is entitled “Communication between the Board and licensees,” prescribes requirements for information requested by the Board.]~~
- ~~8. A candidate who fails to appear for the CPA exam or reexamination shall forfeit the fees charged for that CPA exam or reexamination unless excused by the board. [Observation: Subsection B of the proposed 18VAC5-22-20, which is entitled “Fees,” says that “all fees for services the Board provides are due when the service is requested and are nonrefundable.” It is not necessary to repeat in the regulations that fees are nonrefundable.]~~
- ~~9. The fee to sit for the CPA exam is established in 18 VAC 5 21 20 G, whether paid directly to the board or to a designee under contract to the board. [Observation: The Board believes a regulation that just refers to another regulation is unnecessary and should be deleted.]~~

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~~10. The Board of its designee will forward notification of eligibility for the computer-based CPA exam to NASBA's National Candidate Database. [Observation: The Board believes this is an administrative procedure that does not need to be addressed in the regulations.]~~

~~11. Cheating by a candidate in applying for, taking or subsequent to the CPA exam will be deemed to invalidate any grade otherwise earned by a candidate on any test section of the CPA exam, and may warrant summary expulsion from the CPA exam site and disqualification from taking the CPA exam for a specified period of time. [Observation: The consequences of cheating are addressed in the second sentence of subsection B of the proposed 18VAC5-22-80:~~

Cheating by a person in connection with the CPA examination shall invalidate any grade earned on any section of the CPA examination and may warrant expulsion from the CPA examination site and disqualification from taking the CPA examination for a specified period of time as determined by the Board.]

~~12. Notwithstanding any other provisions under these rules, the Board may postpone scheduled CPA exams, the release of grades, or the issuance of certificates due to a breach of CPA exam security; unauthorized acquisition or disclosure of the contents of a CPA exam; suspected or actual negligence, errors, omissions, or irregularities in conducting a CPA exam; or for any other reasonable cause or unforeseen circumstances. [Observation: The Board's postponement abilities are addressed in subsection C of the proposed 18VAC5-22-80:~~

The Board may postpone scheduled CPA examinations, the release of grades, or the issuance of licenses under the following circumstances:

- 1. A breach of CPA examination security;*
- 2. Unauthorized acquisition or disclosure of the contents of a CPA examination;*
- 3. Suspected or actual negligence, errors, omissions, or irregularities in conducting a CPA examination; or*
- 4. Any other reasonable circumstances.*

These postponement abilities are generally the same as the postponement abilities in subdivision C 12 of 18VAC5-21-30.]

~~D. Experience. [Observation: Section 54.1-4400 defines "experience:"~~

"Experience" means employment in academia, a firm, government, or industry in any capacity involving the substantial use of accounting, financial, tax, or other skills that are

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relevant, as determined by the Board, to providing services to an employer using the CPA title or to the public using the CPA title.

In addition, subdivision A 1 d of § 54.1-4409.2 says that the Board will prescribe an experience requirement. The proposed 18VAC5-22-100, which is entitled “Experience,” prescribes the experience requirement based on the definition of “experience” in § 54.1-4400:

Prior to applying for a license, a person must have been employed in academia, a firm, government, or industry in any capacity involving the substantial use of accounting, financial, tax, or other skills that are relevant, as determined by the Board, to providing services to the public using the CPA title or to an employer using the CPA title for a period that is the full-time equivalent of one year. Whether other skills are relevant shall be determined by the Board on a case-by-case basis. Self-employment does not meet the definition of “experience” in § 54.1-4400 of the Code of Virginia.

The last sentence of the proposed 18VAC5-22-100 addresses a practice issue as to whether a person could through self-employment provide income tax or other services that are often, but are not required to be, performed by a CPA and count those services as experience. The proposed regulation clarifies that the Board intends for experience to be obtained through mentoring and that self-employment of any type does not qualify. Therefore, providing the income tax or other services through self-employment would not qualify as experience.]

- ~~1. Each applicant for initial issuance of a CPA certificate under this section shall provide documentation of having met the experience requirements established by § 54.1-4409 C of the Code of Virginia; [Observation: Subsection C of § 54.1-4409 was repealed by the 2007 revisions. The revised statutes intentionally do not define an experience requirement. Instead, subdivision A 1 d of § 54.1-4409.2 says that the Board will prescribe an experience requirement. In addition, as a result of the 2007 revisions, the statutes now require, in subdivision A 1 d of § 4409.2, that the person shall “describe his experience” and that the “Board shall determine whether his experience complies with the experience requirement prescribed by the Board.” It is therefore no longer necessary for the regulations to require providing documentation.] which requires at least one year of acceptable experience in accounting or a related field. The experience may include providing any type of service or advice involving the use of accounting, management, financial, tax, or consulting advisory skills or services. Acceptable experience shall include employment in government, industry, academia or public accounting or related services. [See the observation for the following subdivision.] The applicant’s experience may be supervised by a non-CPA certificate holder, although, when completing the application for the CPA certificate, the experience must be verified by a CPA certificate holder. [The Board believes that, as result of subdivision A 1 c of § 54.1-4409.2, it is no longer necessary for the regulations to address who can supervise and verify the experience. As an observation, the Board believes the requirement in this subdivision has not been effective in ensuring that a person has obtained the needed experience.]~~

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- ~~2. One year of experience shall consist of full or part-time employment that extends over a period of no less than a year and no more than three years and includes no fewer than 2,000 hours of performance of services described in subdivision 1 of this subsection. [Observation: This subdivision and the preceding subdivision provide wide latitude in determining what acceptable experience is and require at least 2,000 hours of experience over at least one year and no more than three years. The first two sentences of the proposed 18VAC5-22-100 clarify the Board's intention that the experience must involve the substantial use of accounting, financial, tax, or other skills that are relevant, which is the criterion established by the definition of "experience" added to § 54.1-4400 in the 2007 revisions. In addition, rather than specifying a quantitative measure in terms of a minimum number of hours over a prescribed period, the proposed 18VAC5-22-100 only requires that the experience be obtained over a period that is the full-time equivalent of one year.]~~

~~18 VAC 5-21-40. Issuance of original CPA certificate; CPA certificate by endorsement; and substantial equivalency.~~

- ~~A. Practicing as a CPA in the Commonwealth of Virginia. Only an individual who (i) holds a valid CPA certificate or (ii) meets the substantial equivalency requirements in this section may practice as a CPA in the Commonwealth of Virginia. [Observation: This is now addressed in subsection A of § 54.1-4409.1, which says:~~

A person must be licensed in order to use the CPA title in Virginia.

- 1. The person shall hold a Virginia license if he provides services to the public using the CPA title and the principal place of business in which he provides those services is in Virginia.*
- 2. Other persons shall not be required to hold a Virginia license in order to use the CPA title in Virginia provided that they hold the license of another state and comply with the substantial equivalency provisions of § 54.1-4411.*

It is not necessary to repeat these requirements in the regulations. In addition, the Board believes interpretive guidance in the regulations is unnecessary.]

~~B. Original CPA certificate.~~

- ~~1. Each individual who desires to use the CPA designation shall first obtain a CPA certificate. [Observation: This is now addressed in subsection A of § 54.1-4409.1. See the observation to subsection A above.]~~
- ~~2. Each applicant for an original CPA certificate shall submit an application, on a form provided by the board, which shall document that the requirements of 18 VAC 5-21-30 have been met. If the application is received by the board three or more years after~~

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~~the successful completion of the CPA exam by the applicant, the applicant shall, in addition, submit evidence of having met the CPE requirements set forth in 18 VAC 5-21-170 A 3 or B 3, and completed the most recent ethics CPE course. Each applicant shall agree to comply with the statutes and regulations of any other state in which he is authorized to practice. [Observation: Subsection A of § 54.1-4409.2 prescribes the requirements for a person who has not held the license of any state to obtain a Virginia license:~~

1. *To be considered for a Virginia license, the person seeking licensure shall:*
 - a. *Provide documentation that he has obtained from one or more accredited institutions or from the National College at least 150 semester hours of education, a baccalaureate or higher degree, and an accounting concentration or equivalent, as defined by the Board;*
 - b. *Provide documentation that he has passed the CPA examination;*
 - c. *Describe his continuing professional education since he passed the CPA examination. The Board shall determine whether his continuing professional education complies with the continuing professional education requirement prescribed by the Board for that period; and*
 - d. *Describe his experience. The Board shall determine whether his experience complies with the experience requirement prescribed by the Board.*
2. *After evaluating information provided by the person, the Board may request additional information and may impose additional requirements for obtaining a Virginia license.*

It is not necessary to repeat these requirements in the regulations. In addition, the Board believes interpretive guidance in the regulations is unnecessary.]

- ~~3. Each application for an original CPA certificate shall be accompanied by the fee established in 18 VAC 5-21-20. [Observation: This is addressed in subsection B of the proposed 18VAC5-22-20, which is entitled “Fees,” and does not need to be repeated.]~~

- C. ~~CPA certificate by endorsement.~~ *[Observation: Subsection C of § 54.1-4409.2 prescribes how a person who holds the license of another state may obtain a Virginia license:*

1. *To be considered for a Virginia license, the person seeking licensure shall:*

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- a. *Disclose to the Board each state in which he holds or has held a license;*
 - b. *Provide, for each state in which the person holds a license, documentation from the board of accountancy concerning whether he is in good standing with the board, whether there are any pending actions alleging violations of the standards of conduct and practice established by statutes of the state or regulations promulgated by the board, and whether he has been found guilty of any violations of the standards of conduct and practice established by statutes of the state or regulations promulgated by the board;*
 - c. *Disclose, for each state in which the person has held a license, why the license is no longer held and provide documentation from the board of accountancy concerning whether he has been found guilty of any violations of the standards of conduct and practice established by statutes of the state or regulations promulgated by the board;*
 - d. *Describe the semester hours of education he has obtained from colleges and universities. The Board shall determine whether the education obtained is substantially equivalent to the education that would have been required by the Board when the person passed the CPA examination;*
 - e. *Describe his continuing professional education during the most recent reporting period that would be required for the holder of a Virginia license. The Board shall determine whether his continuing professional education complies with the continuing professional education requirement prescribed by the Board for that period; and*
 - f. *Describe his experience. The Board shall determine whether his experience complies with the experience requirement prescribed by the Board.*
2. *After evaluating the information provided by the person, the Board may request additional information and may impose additional requirements for obtaining a Virginia license.*

It is not necessary to repeat these requirements in the regulations. In addition, the Board believes interpretive guidance in the regulations is unnecessary.]

- ~~1. Each individual who holds a CPA certificate in a state other than Virginia and either (i) has moved his principal place of business to Virginia or (ii) does not meet the substantial equivalency provision outlined in subsection G of this section must obtain a CPA certificate by endorsement prior to practicing as a CPA in Virginia.~~
[Observation: Subsection A of § 54.1-4409.1, which is presented in the observation to subsection A above, prescribes whether a Virginia license is required to use the CPA title in Virginia. Section 54.1-4409.2 prescribes how a Virginia license may be

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obtained by a person who has not held the license of any state (subsection A), by a person who does not hold the license of another state but has previously held the license of another state (subsection B), and by a person who holds the license of another state (subsection C). It is not necessary to repeat these requirements in the regulations. In addition, the Board believes interpretive guidance in the regulations is unnecessary.]

- ~~2. Each applicant for a CPA certificate by endorsement shall submit an application, on a form provided by the board, which shall document that the applicant holds a corresponding CPA certificate as a certified public accountant issued after meeting CPA exam and other requirements under laws of the state(s) from which the applicant is seeking a CPA certificate by endorsement. The application shall include the following: [Observation: As the observation at the beginning of this subsection discusses, subsection C of § 54.1-4409.2 prescribes how a person who holds the license of another state may obtain a Virginia license. It is not necessary to repeat this guidance in the regulations. In addition, the Board believes interpretive guidance in the regulations is unnecessary.]~~
- ~~a. From each state from which the applicant has received a CPA certificate (or from the applicant directly if the state is unable to provide the information), a written statement from the board of each state confirming that the applicant (i) is in good standing in that state; (ii) has not been found guilty of violating that state's standards of conduct or practice; (iii) has no pending actions alleging violations of that state's standards of conduct or practice; (iv) has met the education requirements in effect in that state when the applicant passed the national uniform CPA exam described in 18 VAC 5-21-30 C; and (v) has met the experience requirement for a CPA certificate in effect in Virginia when the CPA certificate by endorsement application is received by the board. An applicant who holds a CPA certificate from a state that the board has determined meets the substantial equivalency provision set forth in § 54.1-4411 of the Code of Virginia shall be considered to have met the requirements of clauses (iv) and (v) of this paragraph.4.1~~
- ~~b. A written statement from the applicant affirming that the applicant has (i) not violated the board's standards of conduct or standards of practice and (ii) met the board's continuing education requirements.~~

~~The board may deny the application for a CPA certificate by endorsement if the applicant is not in good standing in the other states which have issued CPA certificates to the applicant or if any information from the applicant indicates a failure to comply with the aforementioned standards.~~

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~~3. Each application for a CPA certificate by endorsement shall be accompanied by the fee established in 18 VAC 5-21-20. [Observation: The Board believes a regulation that just refers to another regulation is unnecessary and should be deleted.]~~

~~D. Each CPA certificate holder shall have the privilege of using the CPA designation provided the CPA certificate holder complies with the (i) standards of conduct, (ii) standards of practice, and (iii) the renewal requirements established by the board. [Observation: Section 54.1-4413.3 prescribes standards of conduct and practice and introduces them by saying, “Persons using the CPA title in Virginia and firms providing attest services or compilation services to persons or entities located in Virginia shall conform to the following standards of conduct and practice.” Section 54.1-4413.2 prescribes the requirements for renewal and reinstatement of licenses and lifting the suspension of privileges. It is not necessary to repeat these requirements in the regulations. In addition, the Board believes interpretive guidance in the regulations is unnecessary.] Upon expiration of the CPA certificate, the CPA certificate holder shall cease displaying the CPA certificate and the wall certificate, and shall cease affixing and using the CPA designation in any manner. [Observation: Section 54.1-4400 defines “using the CPA title” as:~~

“Using the CPA title in Virginia” means using “CPA,” “Certified Public Accountant,” or “public accountant” (i) in any form or manner of verbal communication to persons or entities located in Virginia or (ii) in any form or manner of written communication to persons or entities located in Virginia, including but not limited to the use in any abbreviation, acronym, phrase, or title that appears in business cards, the CPA wall certificate, Internet postings, letterhead, reports, signs, tax returns, or any other document or device.

Subsection A of § 54.1-4409.1 says, “A person must be licensed in order to use the CPA title in Virginia.” Therefore, a person whose license has expired could no longer use the CPA title in Virginia and could no longer display the CPA wall certificate. The Board believes interpretive guidance in the regulations is unnecessary.]

~~E. All CPA certificate holders who supervise services involving the practice of public accountancy and who sign or authorize another to sign the report on the financial statements on behalf of the firm shall meet the experience requirement established in 18 VAC 5-21-50. [Observation: The Board believes a regulation that just refers to another regulation is unnecessary and should be deleted.]~~

~~F. CPA certificates issued under the provisions of this chapter shall expire one year from the last day of the month wherein the initial CPA certificate was issued and shall be renewed in compliance with 18 VAC 5-21-80. [Observation: Subsections A, B, and C of § 54.1-4413.2 address the period covered by the license:~~

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- A. *A Virginia license shall provide its holder with a 12-month privilege to use the CPA title in Virginia or provide attest services and compilation services to persons and entities located in Virginia.*
- B. *The person or firm holding the license shall have an additional 12-month period after the expiration of a license to renew the license.*
 - 1. *The Board may prescribe renewal fees and requirements that increase based on the amount of time the person or firm allows to elapse before applying for renewal.*
 - 2. *During the additional 12-month period, the person or firm shall be considered to hold a Virginia license.*
- C. *If the license is not renewed by the end of the additional 12-month period, it shall be considered to have expired and the person or firm shall be considered to no longer hold a Virginia license.]*

It is not necessary to repeat these requirements in the regulations. In addition, the Board believes interpretive guidance in the regulations is unnecessary.]

~~G. Privilege to practice without a CPA certificate by endorsement, substantial equivalency.~~
[Observation: Section 54.1-4411 prescribes the requirements for a person who holds the license of another state to use the CPA title in Virginia without obtaining a Virginia license:

- A. *A person who holds the license of another state shall be considered to have met requirements that are substantially equivalent to those prescribed by the Board if:*
 - 1. *The Board has determined that the education, CPA examination, and experience requirements of the state are substantially equivalent to those prescribed by the Board, or*
 - 2. *The person has demonstrated meeting education, CPA examination, and experience requirements that are substantially equivalent to those prescribed by the Board. (The notion of a person demonstrating that his education, CPA examination, and experience are substantially equivalent was added to the statutes through the 2007 revisions. It was intended that the person would not be required to notify the Board that his education, CPA examination, and experience are substantially equivalent to the requirements for obtaining a Virginia license. The proposed 18VAC5-22-110, which is entitled “Demonstrating that a person’s education, CPA examination, and experience are substantially equivalent to the requirements for obtaining a Virginia license,” makes that intention clear:*

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Subdivision A 2 of § 54.1-4411 of the Code of Virginia does not require the person to notify the Board that the person's education, CPA examination, and experience are substantially equivalent to the requirements for obtaining a Virginia license.

However, subdivision A 3 of the proposed 18VAC5-22-170, which is entitled "Communication between the Board and licensees," would require the person to support his conclusion if requested by the Board. Subsection A of the proposed 18VAC5-22-170 is introduced with the phrase "When requested by the Board," and subdivision A 3 says:

Persons or firms shall provide the Board documents related to the Board's investigation of their possible violation of provisions of Chapter 44 (§ 54.1-4400 et seq.) of Title 54.1 of the Code of Virginia or Board regulations.)

- B. A person who holds the license of another state and meets the substantial equivalency provisions of subsection A shall not be required to hold a Virginia license to use the CPA title in Virginia provided that either (i) he provides services to the public using the CPA title and the principal place of business in which he provides those services is in other states or (ii) he does not provide services to the public using the CPA title. However, to use the CPA title in Virginia, the person shall:*
- 1. Consent to be subject to:*
 - a. The provisions of this chapter and regulations promulgated by the Board that apply to the holder of a Virginia license,*
 - b. The jurisdiction of the Board in all disciplinary proceedings arising out of matters related to his use of the CPA title in Virginia, and*
 - c. The Board's authority to revoke or suspend his privilege to use the CPA title in Virginia and to impose penalties for the person's violations of the provisions of this chapter or regulations promulgated by the Board.*
 - 2. Consent to the appointment of the executive director of the board of accountancy of the state that issued the license as his agent, upon whom process may be served (i) in any action or proceeding by the Board against him or (ii) in any civil action in Virginia courts arising out of his use of the CPA title in Virginia. In the event he holds a license from more than one state, the Board shall establish which executive director shall serve as his agent.*

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3. *Consent to the personal and subject matter jurisdiction of the courts of Virginia in any civil action arising out of his use of the CPA title in Virginia and agree that the proper venue for such actions is in Virginia.*
 4. *Agree to cease using the CPA title in Virginia if he is no longer licensed.*
- C. *A holder of a Virginia license who is using the CPA title in another state under substantial equivalency provisions of statutes of the state or regulations promulgated by the board of accountancy of the state shall be subject to disciplinary action by the Board for an act or omission committed in that state. The Board may investigate any complaint made to or by the board of accountancy of any state related to the person's use of the CPA title in that state.*
- D. *The Board may cooperate and share information with appropriate authorities in other states in investigations or enforcement matters concerning violations of the provisions of this chapter or regulations promulgated by the Board and comparable statutes or regulations of other states or boards of accountancy.*

It is not necessary to repeat these requirements in the regulations. In addition, the Board believes interpretive guidance in the regulations is unnecessary.]

- ~~1. A holder of a CPA certificate from a state other than Virginia and with a principal place of business in a state other than Virginia shall either obtain a CPA certificate by endorsement as outlined in subsection C of this section or meet the substantial equivalency requirements of this subsection before beginning CPA practice in Virginia. [See the observation at the start of this subsection.]~~
- ~~2. To implement the provisions of § 54.1-4411 A of the Code of Virginia, the privilege to practice under substantial equivalency shall be evidenced by the following: [See the observation at the start of this subsection.]~~
 - ~~a. If the individual's CPA certificate is issued by a state that the board has determined is substantially equivalent, the CPA certificate issued by that state shall constitute evidence of the privilege to practice. [Observation: Subdivision A 1 of § 54.1-4411 clarifies that the education, CPA examination, and experience requirements of the state must be substantially equivalent to the education, CPA examination, and experience requirements for obtaining a Virginia license.]~~
 - ~~b. If the individual's CPA certificate is issued by a state that the board has determined is not substantially equivalent, the CPA certificate holder shall notify the board in writing that he intends to practice in the Commonwealth and shall provide documentation acceptable to the board that he has personally satisfied the requirements for substantial equivalency. [Observation: The proposed 18VAC5-22-110 clarifies that subdivision A 2 of § 54.1-4411 does not require the person to~~

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notify the Board.] An approval letter from the board shall constitute evidence of the privilege to practice. [Observation: The Board believes the regulations should not prescribe what constitutes sufficient support for the conclusion by a person who holds the license of another state that he has complied with the education, CPA examination, and experience requirements for obtaining a Virginia license. What constitutes sufficient support depends on the facts and circumstances.]

- ~~e. A CPA certificate by endorsement shall be obtained if the CPA exercising the privilege to practice under substantial equivalency moves his principal place of business to Virginia or ceases to have an office in any other state. [Observation: See the observation at the beginning of this subsection.]~~
- ~~3. For the purposes of implementing § 54.1-4411 B 2 of the Code of Virginia relating to the privilege of practicing public accounting extended to nonresident CPA certificate holders, the board shall determine the state to be served based on whose statutes and regulations most closely correspond to those of the Commonwealth of Virginia. [Observation: Subdivision B 2 of § 54.1-4411 says that the Board shall establish which board executive director shall serve as the person's agent.]~~
- ~~4. The board shall determine whether a state meets the substantial equivalency provisions for nonresident [Observation: The statutes intentionally do not address residency, and there is no need for the regulations to address residency.] CPA certificate holders by periodically obtaining, reviewing and approving a list of states, which in the opinion of the board, meet the substantial equivalency provisions for nonresident CPA certificate holders. [Observation: Subdivision A 1 of § 54.1-4411 establishes the notion that the Board may determine whether the education, CPA examination, and experience requirements of a state are substantially equivalent to those required to obtain a Virginia license. This requires a more comprehensive review than, for example, determining whether a state requires a person to obtain 150 hours of education, pass the CPA examination, and have experience to obtain a license. As a practical matter, a list such as the one comprehended in this subdivision of the current regulations may not be available. The Board believes the regulations should not prescribe the process the Board uses to evaluate substantial equivalency.]~~

~~18 VAC 5-21-50. Additional requirements for CPAs who supervise services involving the practice of public accountancy and who sign or authorize another to sign reports on financial statements.~~

- ~~A. To implement the provisions of § 54.1-4412 C 7 of the Code of Virginia, any individual CPA certificate holder who is responsible for supervising services involving the practice of public accounting, and who signs or authorizes another person to sign on behalf of the firm the financial statement resulting from the practice of public accounting, shall meet~~

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~~the requirements set forth in subsection B of this section. [Observation: Subdivision C 7 of § 54.1-4412 was repealed by the 2007 revisions to the statutes.]~~

~~Nothing in this section is intended to proscribe an individual who does not have a CPA certificate from affixing his signature to any statement or report for his employer's internal or management use and designating his position, title or office. [Observation: The statutes, in the definition of "practice of public accounting" in § 54.1-4400, now clarify that this would not be prohibited: "Practice of public accounting" means the giving of an assurance other than (i) by the person or persons about whom the financial information is presented or (ii) by one or more owners, officers, employees, or members of the governing body of the entity or entities about whom the financial information is presented.]~~

~~B. Requirements.~~

- ~~1. CPA certificate. Any individual desiring to supervise public accountancy services as described in subsection A of this section shall hold a currently valid CPA certificate issued by this board or shall be in compliance with the substantial equivalency requirements in 18 VAC 5-21-40 G. [Observation: This is now addressed in the statutes. For a firm that holds a Virginia license, subdivision D 3 of § 54.1-4412.1 requires that—~~

All attest services and compilation services provided for persons and entities located in Virginia shall be under the supervision of a person who either (i) holds a Virginia license or (ii) holds the license of another state and complies with the substantial equivalency provisions of § 54.1-4411.

Under subsection C of § 54.1-4412.1, a firm that is not required to obtain a Virginia license may provide attest services or compilation services to persons or entities located in Virginia if:

- 1. The firm's personnel working on the engagement either (i) hold a Virginia license or (ii) hold the license of another state and comply with the substantial equivalency provisions of § 54.1-4411, or*
- 2. The firm's personnel working on the engagement are under the supervision of a person who either (i) holds a Virginia license or (ii) holds the license of another state and complies with the substantial equivalency provisions of § 54.1-4411.*

It is not necessary to repeat these requirements in the regulations. In addition, the Board believes interpretive guidance in the regulations is unnecessary.]

- ~~2. Experience. In addition to the one year of experience required to receive a CPA certificate, such individual shall have completed one year of additional experience in~~

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~~the practice of public accounting, as defined in 18 VAC 5-21-10, with not less than 600 of these hours in the performance of audits if the services involve an audit or not less than 600 of these hours in the performance of reviews or audits if the services involve a review but not an audit. One year of experience shall consist of no fewer than 2,000 hours of full or part time employment that extends over a period of no less than one year and no more than three years. The experience must have been gained under the direct supervision of a CPA licensed in any state. Persons who held a license, as defined in the board's regulations effective on April 1, 1997, issued by the board and in effect on October 4, 1999, shall be deemed to have met this experience requirement. [Observation: Subdivision D 4 of § 54.1-4412.1 requires that: Any person who releases or authorizes the release of reports on attest services or compilation services provided for persons or entities located in Virginia shall:~~

- ~~a. Either (i) hold a Virginia license or (ii) hold the license of another state and comply with the substantial equivalency provisions of § 54.1-4411, and~~
- ~~b. Meet any additional requirements the Board prescribes.~~

In response to subdivision D 4 b of § 54.1-4412.1, the Board is proposing regulation 18VAC5-22-140, which is entitled "Persons who release or authorize the release of reports" and says:

- A. To comply with subdivision D 4 of § 54.1-4412.1 of the Code of Virginia, a person who releases or authorizes the release of reports on attest services or compilation services provided for persons or entities located in Virginia shall annually obtain a minimum of eight hours of continuing professional education related to attest services or compilation services. The hours obtained to meet this requirement shall be considered in determining whether the person has complied with the requirements of 18VAC5-22-90. [18VAC5-22-90 is entitled "Continuing professional education.]*
- B. Firms providing attest services or compilation services shall establish policies and procedures to provide the firm with reasonable assurance that persons who release or authorize the release of reports on attest services or compilation services possess the kinds of competencies that are appropriate given the facts and circumstances. These policies and procedures shall address the required technical proficiency, familiarity with the industry and the person or entity, skills that indicate sound professional judgment, and other competencies necessary under the circumstances.*

The current regulations, in subdivision B 2 of 18VAC5-21-50, generally impose an experience requirement on persons who release or authorize the release of reports that is based on a minimum number of hours.

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The Board believes practice has changed so that prescribing a minimum number of hours is no longer effective in protecting the public. For example, the 600 minimum number of hours required by the current regulations may be sufficient for releasing or authorizing the release of reports on attest services for less complex engagements but would likely not be sufficient for other attest service engagements.

The overriding objective of Subdivision D 4 of § 54.1-4412.1 is to require that a firm have procedures in place to ensure that persons who release or authorize the release of reports have the kinds of competencies that are appropriate for the engagement. The Board therefore drafted the proposed 18VAC5-22-140 to require that a firm establish policies and procedures to provide it with reasonable assurance that persons who release or authorize the release of reports on attest services or compilation services possess the kinds of competencies that are appropriate given the facts and circumstances and to prescribe what these policies and procedures should address. The language is patterned after quality control standards established by the American Institute of Certified Public Accountants. (As an observation, those standards are covered by subdivision 5 of § 54.1-4413.3.)

The Board also believes that the public is better protected if these persons obtain at least eight hours each year of continuing professional education related to attest services or compilation services. Subsection A of the proposed 18VAC5-22-140 therefore prescribes that requirement and notes that these hours shall be considered in determining whether the person has complied with the requirements for continuing professional education in the proposed 18VAC5-22-90, which is entitled “Continuing professional education.” The proposed requirement therefore does not increase the number of hours of continuing professional education required.]

~~18 VAC 5-21-60. Registration of firms.~~ *[Observation: The statutes now prescribe the licensing requirements for firms. Section 54.1-4412.1, which is entitled “Licensing requirements for firms,” says:*

- A. Only a firm can provide attest services or compilation services to persons or entities located in Virginia. However, this shall not affect the privilege of a person who is not licensed to say that financial statements have been compiled or to use the compilation language, as prescribed by subsections B and C of § 54.1-4401.*
- B. A firm that provides attest services or compilation services to persons or entities located in Virginia shall obtain a Virginia license if the principal place of business in which it provides those services is in Virginia.*
- C. A firm that is not required to obtain a Virginia license may provide attest services or compilation services to persons or entities located in Virginia if:*

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1. *The firm's personnel working on the engagement either (i) hold a Virginia license or (ii) hold the license of another state and comply with the substantial equivalency provisions of § 54.1-4411, or*
2. *The firm's personnel working on the engagement are under the supervision of a person who either (i) holds a Virginia license or (ii) holds the license of another state and complies with the substantial equivalency provisions of § 54.1-4411.*

D. For a firm to obtain a Virginia license:

1. *As determined on a firm-wide basis:*
 - a. *At least 51 percent of the owners of the firm shall be licensees, trustees of an eligible employee stock ownership plan as defined in § 13.1-543, or a firm that meets this requirement, and*
 - b. *At least 51 percent of the voting equity interest in the firm shall be owned by persons who are licensees, by trustees of an eligible employee stock ownership plan as defined in § 13.1-543, or by a firm that meets this requirement.*

If the death, retirement or departure of an owner causes either of these requirements not to be met, the requirement shall be met within one year after the death, retirement, or departure of the owner.

2. *The Board shall prescribe requirements concerning the hours that owners who are not licensees work in the firm and may prescribe other requirements for those persons. (The current regulations, in subdivisions B 2 and C 2 of 18VAC5-21-60, prescribe a minimum number of hours those persons must work annually for the firm. The Board believes practice has changed so that prescribing a minimum number of hours is no longer effective in protecting the public. The intention of subdivision D 2 of § 54.1-4412.1 is to prevent control of firms by passive investors. The proposed 18VAC5-22-130, which is entitled "Owners of firms who are not licensees," makes that intention clear, generally saying that owners who are not licensees must participate in the firm's activities on a regular, continuous, and substantial basis. That language is patterned after the Internal Revenue Service guidance on determining whether an individual is a passive investor. The proposed 18VAC5-22-130 says:*

To comply with subdivision D 2 of § 54.1-4412.1 of the Code of Virginia, owners of a firm who are not licensees must be persons who, based on the facts and circumstances, participate in the firm's activities on a regular, continuous, and substantial basis.)

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3. *All attest services and compilation services provided for persons and entities located in Virginia shall be under the supervision of a person who either (i) holds a Virginia license or (ii) holds the license of another state and complies with the substantial equivalency provisions of § 54.1-4411.*
 4. *Any person who releases or authorizes the release of reports on attest services or compilation services provided for persons or entities located in Virginia shall:*
 - a. *Either (i) hold a Virginia license or (ii) hold the license of another state and comply with the substantial equivalency provisions of § 54.1-4411, and*
 - b. *Meet any additional requirements the Board prescribes. (In response, the Board is proposing 18VAC5-22-140, which is entitled “Persons who release or authorize the release of reports” and is discussed in the observation to subdivision B 2 of 18VAC5-21-50 of the current regulations above.)*
 5. *The firm shall conduct its attest services and compilation services in conformity with the standards of conduct and practice in § 54.1-4413.3 and regulations promulgated by the Board.*
 6. *The firm shall be enrolled in the applicable monitoring program of the American Institute of Certified Public Accountants or its successor, or in another monitoring program for attest services and compilation services that is approved by the Board. In addition, the firm shall comply with any requirements prescribed by the Board in response to the results of peer reviews.*
 7. *The name of the firm shall not be false, misleading, or deceptive.]*
- ~~A. To implement the provisions of § 54.1-4412 B of the Code of Virginia, any firm with one or more offices in the Commonwealth that practices, directly or indirectly, public accounting or that uses the term “Certified Public Accountant(s)” or the designation “CPA” in the name of the firm shall register with the board. [Observation: This is no longer correct. Subsection B of § 54.1-4412 has been repealed. As a result of the 2007 revisions to the statutes, there is no longer a registration certificate, and the notion of registration is no longer relevant. In addition, firms that do not provide attest services or compilation services are not required to have a license. Section 54.1-4412.1, which is shown in the observation to the title of 18VAC5-21-60 above, only discusses licensing requirements for firms that provide attest services or compilation services.]~~
- ~~B. To implement the provisions of § 54.1-4412 C of the Code of Virginia, any firm with an office in the Commonwealth providing or offering to provide services involving the practice of public accounting shall be issued a registration certificate by the board upon its application and payment of the required fee provided the firm is in compliance with § 54.1-4412 C of the Code of Virginia. [Observation: Subsection C of § 54.1-4412 has~~

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been repealed. As a result of the 2007 revisions to the statutes, there is no longer a registration certificate, and the notion of registration is no longer relevant. In addition, firms that do not provide attest services or compilation services are not required to have a license. Section 54.1-4412.1, which is shown in the observation to the title of 18VAC5-21-60 above, only discusses licensing requirements for firms that provide attest services or compilation services.]

- ~~1. Each firm shall submit an application on forms provided by the board, which shall contain the following: [Observation: The Board believes this is an administrative procedure that does not need to be addressed in the regulations. As explained in the observation to subsection F of 18VAC5-21-80, the proposed 18VAC5-22-170 prescribes requirements for information requested by the Board.]~~
 - ~~a. A statement that the applicant is registering pursuant to § 54.1-4412 B of the Code of Virginia and has complied with each of the requirements of § 54.1-4412 C of the Code of Virginia.~~
 - ~~b. An affirmation of the peer review as required by 18 VAC 5-21-70.~~
 - ~~c. The designation of a CPA certificate holder that will be the primary contact for the firm, including a firm with multiple offices.~~
- ~~2. To implement § 54.1-4412 C 3 of the Code of Virginia, all non-CPA owners shall work in the firm. [Subdivision C 3 of § 54.1-4412 has been repealed.] “Work in the firm” means that the non-CPA owner works full time for the firm (at least 1,000 hours a year), and that retirees and owners no longer working full time shall have 12 months from the last day of their full-time involvement with the firm to dispose of their interest. [Observation: Subdivision D 2 of § 54.1-4412.1 says the Board shall prescribe requirements concerning the hours that owners who are not licensees work in a firm and may prescribe other requirements for those persons. The current regulations, in subdivisions B 2 and C 2 of 18VAC5-21-60, prescribe a minimum number of hours those persons must work annually for the firm. The Board believes practice has changed so that prescribing a minimum number of hours is no longer effective in protecting the public. The intention of subdivision D 2 of § 54.1-4412.1 is to prevent control of firms by passive investors. The proposed 18VAC5-22-130 makes that intention clear, generally saying that owners who are not licensees must participate in the firm’s activities on a regular, continuous, and substantial basis. That language is patterned after the Internal Revenue Service guidance on determining whether an individual is a passive investor.] Heirs shall have 24 months from the time they receive their bequest or inheritance in which to dispose of the ownership interest. [Observation: Subdivision D 1 of § 54.1-4412.1 prescribes two requirements for firms that hold a Virginia license that are designed to ensure that the firm is controlled by licensees. Subdivision D 1 of § 54.1-4412.1 therefore requires curing a loss of control by licensees, saying:~~

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If the death, retirement, or departure of an owner causes either of these requirements not to be met, the requirement shall be met within one year after the death, retirement, or departure of the owner.

The Board believes it is not necessary for the statutes or the regulations to address the disposition of noncontrolling interests in firms.]

~~C. To implement § 54.1-4412 D of the Code of Virginia, any firm with an office in the Commonwealth that is not engaged in the practice of public accounting but uses the term “Certified Public Accountant” or the “CPA” designation in its name shall be issued a registration certificate by the board upon its application and payment of the required fee provided the firm is in compliance with § 54.1-4412 C 1, 2, 3, and 8 of the Code of Virginia. [Observation: This is no longer correct. Subsection D of § 54.1-4412 has been repealed. Firms that do not provide attest services or compilation services are not required to have a license. Section 54.1-4412.1, which is shown in the observation to the title of 18VAC5-21-60 above, only discusses licensing requirements for firms that provide attest services or compilation services.]~~

~~1. Such firm shall submit an application provided by the board that shall contain the following: [Observation: The Board believes this is an administrative procedure that does not need to be addressed in the regulations. As explained in the observation to subsection F of 18VAC5-21-80, the proposed 18VAC5-22-170 prescribes requirements for information requested by the Board.]~~

~~a. A statement that the applicant is registering pursuant to § 54.1-4412 D of the Code of Virginia and has complied with each of the requirements set forth in § 54.1-4412 D of the Code of Virginia.~~

~~b. A statement that the firm has or has not compiled financial statements, which, as required by SSARS and § 54.1-4413 of the Code of Virginia, shall be prepared in compliance with SSARS.~~

~~c. If the firm has compiled financial statements in accordance with SSARS, an affirmation of the peer review as required by 18 VAC 5-21-70.~~

~~d. The designation of a CPA certificate holder that will be the primary contact for the firm, including a firm with multiple offices.~~

~~2. To implement § 54.1-4412 C 3 of the Code of Virginia, all non-CPA owners shall work in the firm. “Work in the firm” means that the non-CPA owner works full time for the firm (at least 1,000 hours a year), and that retirees and owners no longer working full time shall have 12 months from the last day of their full-time involvement with the firm to dispose of their interest. Heirs shall have 24 months~~

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~~from the time they receive their bequest or inheritance in which to dispose of the ownership interest. [Observation: As explained in the observation at the beginning of this subsection, these firms are no longer required to hold a Virginia license. Also, the observation to subdivision B 2 of 18VAC5-21-60 discusses the notion of participation in a firm's activities.]~~

~~D. The fee for a registration certificate is set forth in 18 VAC 5-21-20. [Observation: The Board believes a regulation that just refers to another regulation is unnecessary and should be deleted.]~~

~~E. Pursuant to § 54.1-4412 C 6 of the Code of Virginia, all firms required to obtain registration certificates shall meet the standards set forth in 18 VAC 5-21-160. [Observation: The Board believes a regulation that just refers to another regulation is unnecessary and should be deleted. Also, as discussed in the observation at the beginning of Part IV of the current regulation, the Board is proposing to delete the standards of conduct and practice in the regulations because the statutes now prescribe standards of conduct and practice.]~~

~~F. Each registration certificate shall expire two years from the last day of the month wherein issued and shall be renewed in compliance with 18 VAC 5-21-80. [Observation: The statutes, in subsections A, B, and C of § 54.1-4413.2, now address the period covered by the license and renewal requirements for both persons and firms. Those subsections are presented in the observation to subsection F of 18VAC5-21-40.]~~

18 VAC 5-21-70. Peer review. *[Observation: Subdivision D 6 of § 54.1-4412.1 requires a firm to be enrolled in the applicable monitoring program of the American Institute of Certified Public Accountants or its successor, or in another monitoring program for attest services and compilation services that is approved by the Board, and to comply with any requirements prescribed by the Board in response to the results of peer reviews.]*

Section 54.1-4400 defines “peer review” as:

"Peer review" means a review of a firm's attest services and compilation services that is conducted in accordance with the applicable monitoring program of the American Institute of Certified Public Accountants or its successor, or with another monitoring program approved by the Board.

18VAC5-21-70 is devoted to peer review, but some of its requirements are now out-of-date. Because the 2007 revisions to the statutes define “peer review” in § 54.1-4400 in a way that makes it evergreen, the Board believes the regulations should only address three aspects of peer review.

- a. The first two are addressed by the proposed 18VAC5-22-150, which is entitled “Monitoring program and peer review.”*

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1. *The proposed regulation requires that the firm comply with all components of the monitoring program in which it is enrolled. That clarifies that the intention of subdivision D 6 of § 54.1-4412.1 is to require not just that the firm be enrolled in a monitoring program but that it also comply with all components of the monitoring program.*
2. *The proposed regulation also gives the Board the latitude to waive the requirement for a peer review or grant additional time for complying with the peer review requirement.*

The proposed 18VAC5-22-150 says:

In order to comply with subdivision D 6 of § 54.1-4412.1 of the Code of Virginia, a firm shall comply with all components of the monitoring program in which it is enrolled, except that, depending on the facts and circumstances, the Board may waive the requirement for a peer review or grant additional time for complying with the requirement.

- b. *The third aspect is addressed in subdivision A 2 of the proposed 18VAC5-22-170, which is entitled “Communication between the Board and licensees” and requires that, when requested by the Board, firms must provide proof of enrollment in a monitoring program and copies of reports and other documentation related to acceptance of their peer reviews. The subdivision says:*

Firms shall provide the Board with proof of enrollment in a monitoring program and copies of reports and other documentation related to acceptance of their peer reviews.

It is not necessary to repeat these requirements in the regulations, and the Board believes interpretive guidance in the regulations is unnecessary.]

- ~~A. To implement the provisions of § 54.1-4412 C 5 and D 2 of the Code of Virginia, firms meeting the requirements set forth in this section shall provide the board with evidence, as described in subsection E of this section, that the firm has undergone, no less frequently than every three years, a peer review. Each peer review shall be performed and reported in accordance with standards that are no less stringent than the peer review program of the American Institute of Certified Public Accountants. Prior to its use by a registrant's reviewer, the board must approve a peer review program other than the peer review program of the American Institute of Certified Public Accountants. Firms not required to register with the board are not required to comply with the peer review requirement. [Observation: See the observation at the beginning of 18VAC5-21-70.]~~

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~~B. If a firm performs the services described in subsection D of this section, a peer review is required and the firm shall provide an affirmation of such peer review to the board in accordance with the dates set forth in subsection C of this section. The nature of the review will be determined based on the peer review selection criteria, which criteria shall consider the highest level of service provided and shall be no less stringent than the criteria of the peer review program of the American Institute of Certified Public Accountants (Standards for Performing and Reporting on Peer Reviews, effective January 1999, American Institute of Certified Public Accountants). The date of the year-end used for the peer review shall not be more than 48 months prior to the month of the initial registration or the renewal month for a renewal registration. [Observation: See the observation at the beginning of 18VAC5-21-70.]~~

~~C. Applicable dates.~~

~~1. An affirmation of a peer review is not required for an initial or renewal application for a registration certificate filed prior to July 1, 2002. [Observation: This is out-of-date. The Board believes it should therefore be deleted.]~~

~~2. Initial or renewal applications due after June 30, 2002, are required to include an affirmation of a peer review except that a firm first initiating services requiring a peer review after July 1, 1999, shall comply with the peer review requirement within three years after first initiating services requiring a peer review. Affirmation of a timely peer review shall be provided with the initial or first renewal application immediately following the aforementioned three-year period. [Observation: The Board believes this is an administrative procedure that does not need to be addressed in the regulations. As explained in the observation to subsection F of 18VAC5-21-80, the proposed 18VAC5-22-170 prescribes requirements for information requested by the Board.]~~

~~D. The nature of the services requiring a peer review and the nature of such reviews are set forth in this subsection. [Observation: See the observation at the beginning of 18VAC5-21-70.]~~

~~1. System review. This review applies to firms that perform engagements governed by the Statements on Auditing Standards (SASs) or examinations of prospective financial information under the Statements on Standards for Attestation Engagements (SSAEs), as established by the American Institute of Certified Public Accountants, or the Government Auditing Standards (the Yellow Book) issued by the U.S. General Accounting Office (GAO).~~

~~2. Engagement review. This review is required for firms that are not required to have a system review and who are not eligible to have a report review as described in subdivision 3 of this subsection. It applies to registered firms that do not perform engagements in accordance with SASs or examinations of prospective financial~~

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- ~~statements under the SSAEs but do perform engagements in accordance with the Statements on Standards for Accounting and Review Services (SSARs) or review engagements in accordance with the SSAEs, both as established by the American Institute of Certified Public Accountants.~~
- ~~3. Report review. This review applies to firms that only perform compilations, as described in the SSARs, that omit substantially all disclosures.~~
- E. ~~Required affirmation of peer review. The applicant for an initial or a renewal registration certificate shall include an affirmation with the application that the firm (i) has complied with the peer review provisions in § 54.1-4412 C of the Code of Virginia and with the provisions of this section; (ii) has received a final acceptance letter from the entity administering the peer review program; and (iii) will maintain its peer review documents until the later of the date of the final acceptance letter for its next peer review or four years. The board reserves the right to request a copy of the peer review report or any other document relating to the peer review program. [Observation: The Board believes an affirmation is an administrative procedure that does not need to be addressed in the regulations. Subdivision A 2 of the proposed 18VAC5-22-170 requires that, when requested by the Board, firms must provide proof of enrollment in a monitoring program and copies of reports and other documentation related to acceptance of their peer reviews.]~~
- F. ~~Final acceptance letter not available. If an applicant for registration cannot provide a final letter of acceptance indicating that the peer review is complete, then the applicant shall file the application with (i) a copy of the “subject to” acceptance letter and other relevant documents that explain the reasons why a final acceptance letter was not issued and (ii) a statement setting forth the registrant’s plan of action that will enable the registrant to receive a final acceptance letter. This submission will extend the due date of the application for six months from the original due date of the application. [Observation: Subdivision A 2 of the proposed 18VAC5-22-170 requires that, when requested by the Board, firms must provide proof of enrollment in a monitoring program and copies of reports and other documentation related to acceptance of their peer reviews.]~~

Part III.

Renewal/Reinstatement of CPA Certificate and Registration Certificate and Other General Requirements

18 VAC 5-21-80. Requirement for renewal.

- A. ~~Each CPA certificate issued under the provisions of this chapter shall be renewable for a period of one year. [Observation: Subsection A of § 54.1-4413.2 states that a Virginia license provides its holder with a 12-month privilege. It is not necessary to repeat that in the regulations. In addition, the Board believes interpretive guidance in the regulations is unnecessary.]~~

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- ~~B. Each registration certificate shall be renewable for periods of two years. [Observation: Subsection A of § 54.1-4413.2 states that a Virginia license provides its holder with a 12-month privilege. It is not necessary to repeat that in the regulations. In addition, the Board believes interpretive guidance in the regulations is unnecessary.]~~
- ~~C. Registration certificates issued to professional corporations and professional limited liability companies in accordance with the regulations of the board in effect beginning on April 1, 1997, became void on November 30, 1999. [Observation: This time-sensitive regulation is no longer relevant, and therefore no longer necessary. The Board believes it should be deleted.]~~
- ~~D. Renewal notices will be mailed to the regulant at the last known address of record. Failure to receive written notice does not relieve the regulant of the requirement to renew and pay the required fee. [Observation: Subsection C of the proposed 18VAC5-22-170, which is entitled “Communication between the Board and licensees,” states, “The Board shall transmit license renewal notices electronically unless a person or firm is unable to communicate electronically. However, § 54.1-4413.2 of the Code of Virginia places the responsibility for renewing a Virginia license on its holder, and that responsibility is not affected by whether the holder receives a license renewal notice.”] The date the board receives the renewal notice and fee shall determine whether other fees established by 18 VAC 5-21-20 are payable. Fees shall not be refunded or prorated. [Observation: Subsection B of the proposed 18VAC5-22-20, which is entitled “Fees,” states, “All fees for services the Board provides are due when the service is requested and are nonrefundable.”]~~
- ~~E. Fees for renewal of a CPA certificate and a registration certificate are established in 18 VAC 5-21-20. [Observation: The Board believes a regulation that just refers to another regulation is unnecessary and should be deleted.]~~
- ~~F. Representations. An individual holding a CPA certificate issued by the board shall submit a renewal application provided by the board, which application shall contain a statement that the applicant has (i) complied with the board’s standards of conduct and applicable standards of practice; (ii) met the applicable CPE requirements set forth in 18 VAC 5-21-170 for the three years prior to the year the renewal application is submitted; and (iii) met the requirements set forth in 18 VAC 5-21-50 B if the CPA certificate holder is responsible for supervising services involving the practice of public accounting, and signs or authorizes another person to sign the accountant’s report on the financial statement on behalf of the firm.~~

~~A firm holding a registration certificate issued by the board shall submit (i) a renewal application provided by the board affirming that it continues to meet the standards set forth in 18 VAC 5-21-60 and (ii), in the case of firms subject to the peer review~~

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requirement set forth in ~~18 VAC 5-21-70~~, an affirmation that it has undergone, no less frequently than once every three years, a peer review.

[Observation: A number of the current regulations require providing documentation when requested by the Board. Rather than prescribing each situation, the Board believes a more efficient and effective approach to protecting the public is to establish a general requirement in the new regulations. Subsection A of the proposed 18VAC5-22-170, which is entitled “Communication between the Board and licensees,” establishes three categories of requests for information that require compliance:

- a. Support for the conclusion that the person or firm applying for the issuance, renewal, or reinstatement of a Virginia license or for lifting the suspension of the privilege of using the CPA title in Virginia or providing attest services or compilation services for persons or entities located in Virginia has complied with the requirements of applicable statutes and regulations.*
- b. Proof of a firm’s enrollment in a monitoring program and copies of reports and other documentation related to acceptance of its peer review.*
- c. Documents related to the Board’s investigation of the possible violation by a person or firm of provisions of the statutes or regulations. This provision is similar to subsection F of 18VAC5-21-160 of the current regulations, which applies to firms.]*

~~G. If the required renewal fee is received more than 30 days after the expiration date but within one year after the expiration date, a late fee will be charged in addition to the renewal fee as provided for in 18 VAC 5-21-20.~~ *[Observation: Subsection B of the proposed 18VAC5-22-20, which is entitled “Fees,” states, “All fees for services the Board provides are due when the service is requested and are nonrefundable.” The additional fee for a license renewal that is not timely provided for in subsection A of the proposed 18VAC5-22-20 is therefore required if the renewal application is not filed when it is due. It is not necessary to repeat these provisions in the regulations. In addition, the Board believes interpretive guidance in the regulations is unnecessary.]*

~~**18 VAC 5-21-90. Requirement for reinstatement.**~~ *[Observation: Subsection E of § 54.1-4413.2 prescribes the requirements for a person to have his Virginia license reinstated, and subsection F of § 54.1-4413.2 prescribes the requirements for a firm to have its Virginia license reinstated. It is not necessary for the regulations to repeat those requirements. In addition, the Board believes interpretive guidance in the regulations is unnecessary and therefore 18VAC5-21-90 should be deleted.*

Subsection A of the proposed 18VAC5-22-20, which is entitled “Fees,” prescribes a reinstatement fee. Under subsection C of § 54.1-4413.2, if a Virginia license is not renewed by the end of the additional 12-month period provided by subsection B of § 54.1-4413.2, the license shall be considered to have expired and the person or firm shall be considered to no longer hold

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a Virginia license. The requirement in 18VAC5-21-20 to “pay all unpaid renewal fees in addition to the late renewal” fees is therefore no longer relevant. Once the license has been expired, it cannot be renewed, and therefore there are no “unpaid renewal fees” after a license has expired. Subsections D, E, and F of § 54.1-4413.2 provide the only alternatives. Accordingly, subdivision A 6 of 18VAC5-21-90 of the current regulations is no longer applicable, and the proposed new regulations do not require fees other than the reinstatement fee in the proposed 18VAC5-22-20 for reinstatement.]

~~A. In addition to meeting the requirements for renewal set forth in 18 VAC 5-21-80, a regulant shall comply with the following requirements if the regulant fails to renew within 12 months after the expiration of the applicable certificate: [Observation: As discussed in the observation at the start of this section, the statutes now provide an additional 12-month period after the initial 12-month period to renew a Virginia license. Once that additional 12-month period ends, the person or firm is considered to no longer hold a Virginia license and the only alternative generally is to apply for reinstatement.]~~

~~1. If the regulant fails to renew his CPA certificate or registration certificate within 12 months following its expiration or voluntary termination by the holder of a CPA certificate or registration certificate, he will be required to present reasons for reinstatement. [Observation: Information required for persons is prescribed by subdivision E 1 (for persons) and F 1 (for firms) of § 54.1-4413.2.]~~

~~2. No application for reinstatement shall be considered while the petitioner is under sentence for criminal offense related to the practice of accountancy, including any period during which the petitioner is on probation or parole for such offense. [Observation: The notion of a person’s character was only discussed in the statutes prior to the 2007 revisions in the context of issuing a “CPA certificate.” It is only discussed in the current regulations in that context. The Board believes it cannot deny a person a license just because he has a history of dishonest or felonious acts. For example, § 54.1-4419 of the statutes prior to the 2007 revisions, which was entitled “prior convictions not to abridge rights,” said:~~

A person shall not be refused a license to practice, pursue, or engage in public accountancy solely because of a prior criminal conviction, unless the criminal conviction directly relates to the practice of public accountancy. However, the Board shall have the authority to refuse a license if, based upon all the information available, including the applicant's record of prior convictions, it finds that the applicant is unfit or unsuited to engage in the practice of public accountancy.

The Board believes the notion of whether a criminal conviction “directly relates to the practice of public accountancy” is nebulous. For example, does misappropriation of financial assets always relate to the practice of public accountancy or only when the misappropriation was committed by a person involved

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with an entity's accounting system? Accordingly, § 54.1-4409.2 does not prescribe "character" as a requirement for obtaining a Virginia license, but subdivisions A 2, B 2, and C 2 of § 54.1-4409.2 provide the general caveat that:

After evaluating information provided by the person, the Board may request additional information and may impose additional requirements for obtaining a Virginia license.]

- ~~3. Reinstatement fees, which are nonrefundable and shall not be prorated, are established in 18 VAC 5-21-20. [Observation: The Board believes a regulation that just refers to another regulation is unnecessary and should be deleted.]~~
 - ~~4. Applicants for reinstatement of the CPA certificate shall affirm on a form provided by the board that they continue to meet the standards for entry as set forth in 18 VAC 5-21-30, and for renewal as set forth in 18 VAC 5-21-80. Applicants for reinstatement of the registration certificate shall affirm on a form provided by the board that they continue to meet the standards of conduct and applicable standards of practice, and the renewal requirements set forth in 18 VAC 5-21-80. [Observation: The Board believes this is an administrative procedure that does not need to be addressed in the regulations. As explained in the observation to subsection F of 18VAC5-21-80, the proposed 18VAC5-22-170 prescribes requirements for information requested by the Board.]~~
 - ~~5. If the regulation has failed to renew his CPA certificate or registration certificate for a period of 12 months or longer, a reinstatement fee as set forth in 18 VAC 5-21-20 shall be due in addition to the renewal fee and late renewal fee established in 18 VAC 5-21-20. [Observation: As explained in the observation at the beginning of this section, once a license expires, the renewal fees are no longer relevant because the license cannot be renewed.]~~
 - ~~6. The renewal and late renewal fee for each renewal period in which the regulant failed to renew his CPA certificate or registration certificate shall be paid as set forth in 18 VAC 5-21-20. [Observation: As explained in the observation at the beginning of this section, once a license expires, the renewal fees are no longer relevant because the license cannot be renewed.]~~
- ~~B. If the requirements set forth in subsection A are not met, the board shall advise the applicant that reinstatement has been denied and the reasons for the denial. The reinstatement request may be resubmitted when the applicant believes the matters affecting the reinstatement application have been satisfactorily resolved. The reinstatement applicant may request a proceeding in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). [Observation: This provision is now in the statutes, in subdivision E 3 (for persons) and F 3 (for firms) of § 54.1-4413.2.]~~

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~~18 VAC 5-21-100. Status of certificate holder during the period prior to reinstatement.~~

~~A regulant who is reinstated shall be regarded as having been a regulant continuously without interruption. Therefore, the regulant shall remain under the disciplinary authority of the board during this entire period and may be held accountable for his activities during this period. A regulant who is not reinstated shall be regarded as unlicensed from the expiration date of the CPA certificate or registration certificate forward. Nothing in this chapter shall divest the board of its authority to discipline a regulant for a violation of the law or regulations during the period of time for which the regulant held a CPA certificate or registration certificate. [Observation: The Board believes these requirements are no longer applicable or necessary because of three statutes added in 2007:~~

- a. *Section 54.1-4413.2, which prescribes requirements for renewal and reinstatement of Virginia licenses held by persons and firms:*
 1. *Subsection A provides the holder of a Virginia license with a 12-month privilege.*
 2. *Subsection B provides the holder of a Virginia license an additional 12-month period after the expiration of the license to renew the license. Under subdivision B 2, during the additional 12-month period, the person or firm is considered to hold a Virginia license.*
 3. *Under subsection C, if the license is not renewed by the end of the additional 12-month period, it shall be considered to have expired and the person shall be considered to no longer hold a Virginia license.*
 4. *Under subsection D, a person whose Virginia license expired may obtain a Virginia license under subsection C of § 54.1-4409.2 if he holds the license of another state.*
 5. *If subsection D does not apply, the only other alternative is reinstatement under subsection E for a person or subsection F for a firm.*
- b. *Section 54.1-4414 prescribes acts that are prohibited for persons or firms who do hold a Virginia license.*
- c. *Subsection C of § 54.1-4413.4 enables the Board to impose penalties on persons or firms who perform the acts prohibited by § 54.1-4414.]*

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~~18 VAC 5-21-110. Notification of change of address or name, response to board communication.~~

- ~~A. Each regulant shall notify the board in writing within 30 days of any change of address or name. [Observation: This requirement is in subsection B of the proposed 18VAC5-22-170, which is entitled “Communication between the Board and licensees” states:~~

Each holder of a Virginia license shall notify the Board in writing within 30 calendar days of any change in the holder’s name or in the postal and electronic addresses where the person or firm may be reached.]

- ~~B. Each regulant shall respond within 30 days to any request for information made by the board. [Observation: this requirement is in the last sentence of subsection A of the proposed 18VAC5-22-170, which states:~~

Each person or firm shall respond within 30 calendar days to any request for information by the Board under this subsection.]

**Part IV
Standards of Conduct**

[Observation: Prior to the 2007 revisions, the statutes referred to standards of conduct and practice but did not define them. Instead, they were defined in the five sections presented as Parts IV, V, and VI of the current regulations. Much of the requirements in those sections are out-of-date. For example, Part V of the current regulations generally only requires compliance with accounting and auditing guidance provided by authoritative sources through 2000.

Section 54.1-4413.3 was added to the statutes as part of the 2007 revisions to require compliance with standards of conduct and practice that are tied to guidance provided by nationally-recognized standard-setting bodies that is regularly updated. That way the standards of conduct and practice remain evergreen and will not require updating. Section 54.1-4413.3 states:

Persons using the CPA title in Virginia and firms providing attest services or compilation services to persons or entities located in Virginia shall conform to the following standards of conduct and practice.

- 1. Exercise sensitive professional and moral judgment in all activities.*
- 2. Act in a way that serves the public interest, honors the public trust, and demonstrates commitment to professionalism.*
- 3. Perform all professional responsibilities with the highest sense of integrity, maintain objectivity and freedom from conflicts of interest in discharging professional*

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responsibilities, and avoid knowingly misrepresenting facts or inappropriately subordinating judgment to others.

4. *Follow the Code of Professional Conduct, and the related interpretive guidance, issued by the American Institute of Certified Public Accountants, or any successor standard-setting authorities.*
5. *Follow the technical standards, and the related interpretive guidance, issued by committees and boards of the American Institute of Certified Public Accountants that are designated by the Council of the American Institute of Certified Public Accountants to promulgate technical standards, or that are issued by any successor standard-setting authorities.*
6. *Follow the standards, and the related interpretive guidance, as applicable under the circumstances, , issued by the Comptroller General of the United States, the Federal Accounting Standards Advisory Board, the Financial Accounting Standards Board, the Governmental Accounting Standards Board, the Public Company Accounting Oversight Board, the U. S. Securities and Exchange Commission, comparable international standard-setting authorities, or any successor standard-setting authorities.*
7. *Do not engage in any activity that is false, misleading, or deceptive.*

The Board believes § 54.1-4413.3 stands on its own and that Parts IV, V, and VI of the current regulations should be deleted.]

~~18 VAC 5-21-120. Standards of conduct for all regulants.~~

- ~~A. Responsibilities. A regulant shall exercise sensitive professional and moral judgment in all activities. [Observation: This is required by subdivision 1 of § 54.1-4413.3. Repeating the requirement in the regulations is unnecessary. In addition, the Board believes interpretive guidance in the regulations is unnecessary.]~~
- ~~B. Public interest. A regulant shall act in a way that serves the public interest, honors the public trust, and demonstrates commitment to professionalism. [Observation: This is required by subdivision 2 of § 54.1-4413.3. Repeating the requirement in the regulations is unnecessary. In addition, the Board believes interpretive guidance in the regulations is unnecessary.]~~
- ~~C. Integrity and objectivity. A regulant shall perform all professional responsibilities with the highest sense of integrity, maintain objectivity and freedom from conflicts of interest in discharging professional responsibilities, and avoid knowingly misrepresenting facts or inappropriately subordinating his judgment to others. [Observation: This is required by subdivision 3 of § 54.1-4413. Repeating the requirement in the regulations is~~

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unnecessary. In addition, the Board believes interpretive guidance in the regulations is unnecessary.]

~~D. Independence. A CPA certificate holder and registration certificate holder shall be independent in fact and appearance when offering to provide or providing services pursuant to the standards listed in the definition of “standards of practice for CPA certificate holders.”~~ *[Observation: Independence requirements are prescribed by the Code of Professional Conduct, and the related interpretive guidance, issued by the American Institute of Certified Public Accountants. Compliance with those requirements is therefore required by subdivision 4 of § 54.1-4413.3. Repeating the requirement in the regulations is unnecessary. In addition, the Board believes interpretive guidance in the regulations is unnecessary.]*

~~E. Professional competence. A regulant shall undertake only those professional services that can reasonably be expected to be completed with professional competence.~~ *[Observation: Professional competence requirements are prescribed by the Code of Professional Conduct, and the related interpretive guidance, issued by the American Institute of Certified Public Accountants. Compliance with those requirements is required by subdivision 4 of § 54.1-4413.3. Professional competence requirements are also prescribed in the Statements on Quality Control Standards issued by the Auditing Standards Board of the American Institute of Certified Public Accountants. Compliance with those Statements is required by subdivision 5 of § 54.1-4413.3. Repeating the requirements in the regulations is unnecessary. In addition, the Board believes interpretive guidance in the regulations is unnecessary.]*

~~F. Due professional care. A regulant shall exercise due professional care in the performance of professional services.~~ *[Observation: Due professional care requirements are prescribed by the Code of Professional Conduct, and the related interpretive guidance, issued by the American Institute of Certified Public Accountants. Compliance with those requirements is required by subdivision 4 of § 54.1-4413.3. Due professional care requirements are also prescribed for specific services by technical standards, and the related interpretive guidance, issued by committees and boards of the American Institute of Certified Public Accountants that are designated by the Council of the American Institute of Certified Public Accountants to promulgate technical standards. Compliance with those requirements is required by subdivision 5 of § 54.1-4413.3. Repeating the requirements in the regulations is unnecessary. In addition, the Board believes interpretive guidance in the regulations is unnecessary.]*

~~G. Planning and supervision. A regulant shall adequately plan and supervise the performance of professional services.~~ *[Observation: Planning and supervision requirements are prescribed by the Code of Professional Conduct, and the related interpretive guidance, issued by the American Institute of Certified Public Accountants. Compliance with those requirements is required by subdivision 4 of § 54.1-4413.3. Planning and supervision requirements are also prescribed for specific services by*

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technical standards, and the related interpretive guidance, issued by committees and boards of the American Institute of Certified Public Accountants that are designated by the Council of the American Institute of Certified Public Accountants to promulgate technical standards. Compliance with those requirements is required by subdivision 5 of § 54.1-4413.3. Repeating the requirements in the regulations is unnecessary. In addition, the Board believes interpretive guidance in the regulations is unnecessary.]

~~H. Sufficient relevant data. A regulant shall obtain sufficient relevant data to afford a reasonable basis for conclusions or recommendations in relation to any professional services performed. [Observation: Sufficient relevant data requirements are prescribed by the Code of Professional Conduct, and the related interpretive guidance, issued by the American Institute of Certified Public Accountants. Compliance with those requirements is required by subdivision 4 of § 54.1-4413.3. Sufficient relevant data requirements are also prescribed for specific services by technical standards, and the related interpretive guidance, issued by committees and boards of the American Institute of Certified Public Accountants that are designated by the Council of the American Institute of Certified Public Accountants to promulgate technical standards. Compliance with those requirements is required by subdivision 5 of § 54.1-4413.3. Repeating the requirements in the regulations is unnecessary. In addition, the Board believes interpretive guidance in the regulations is unnecessary.]~~

~~I. Accounting principles. A CPA certificate holder shall not express an opinion or state affirmatively that financial statements or other financial data of any entity are presented in conformity with generally accepted accounting principles or state that the CPA certificate holder is not aware of any material modifications that should be made to such statements or data in order for them to be in conformity with generally accepted accounting principles, if such statements or data contain any departure from any of the standards described in the definition of the “standards of practice for CPA certificate holders” that has a material effect on the statements or data taken as a whole with the following exception: the CPA certificate holder can demonstrate that, due to unusual circumstances, the financial statements or data would otherwise have been misleading without the departure, and the approximate effects of the departure, if practicable, and the reasons why compliance with the principle would result in a misleading statement are provided in the statements or data. [Observation: Subdivision 6 of § 54.1-4413.3 prescribes the authoritative sources of generally accepted accounting principles. Requirements for accounting principles under other comprehensive bases of accounting are prescribed by sources in subdivision 5 of § 54.1-4413.3. Subdivision 5 of § 54.1-4413.3 also prescribes the authoritative sources of guidance on reporting on presentations of financial information. Repeating the requirements in the regulations is unnecessary. In addition, the Board believes interpretive guidance in the regulations is unnecessary.]~~

~~J. Confidential client information. A regulant shall not disclose any confidential client information without the specific consent of the client. This rule shall not be construed to~~

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~~(i) affect in any way the regulant's obligation to comply with a validly issued and enforceable subpoena or summons, or to prohibit a regulant's compliance with applicable laws and government regulations, (ii) prohibit review of a regulant's professional practice by this board, (iii) prohibit a review in conjunction with a prospective purchase, sale or merger of all or part of a regulant's practice so long as the regulant takes appropriate precautions (e.g., through a written confidentiality agreement) so that the prospective purchaser does not disclose any information obtained in the course of the review, or (iv) prohibit a review in conjunction with a peer review of a firm as provided in 18 VAC 5-21-70. The reviewers of such information shall not use to their advantage nor disclose any regulant's confidential client information that comes to their attention. [Observation: Confidential client information requirements are prescribed by the Code of Professional Conduct, and the related interpretive guidance, issued by the American Institute of Certified Public Accountants. Compliance with those requirements is therefore required by subdivision 4 of § 54.1-4413.3. Repeating the requirements in the regulations is unnecessary. In addition, the Board believes interpretive guidance in the regulations is unnecessary.]~~

~~K. Contingent fees. As provided in § 54.1-4414 D 2 and 3 of the Code of Virginia, a CPA certificate holder shall not perform for a contingent fee: (i) any services for, or receive such a fee from, a client for whom the CPA certificate holder or the CPA certificate holder's firm performs services which involve the practice of public accounting, during the period when such services are being provided and during the period covered by the financial statements; or (ii) prepare an original tax return or claim for a tax refund for a contingent fee for any client. [Observation: Contingent fee requirements are prescribed by the Code of Professional Conduct, and the related interpretive guidance, issued by the American Institute of Certified Public Accountants. Compliance with those requirements is therefore required by subdivision 4 of § 54.1-4413.3. Repeating the requirement in the regulations is unnecessary. In addition, the Board believes interpretive guidance in the regulations is unnecessary.]~~

- ~~1. Preparation of an original tax return or claim for a tax refund includes giving advice on events that have occurred at the time the advice is given if such advice is directly relevant to determining the existence, character, or amount of a schedule, entry, or other portion of a return or claim for refund.~~
- ~~2. A fee is considered determined based on the findings of governmental agencies if the regulant can demonstrate a reasonable expectation, at the time of a fee arrangement, of substantive consideration by an agency with respect to the regulant's client. Such an expectation is deemed not reasonable in the case of preparation of original tax returns.~~

~~L. Commissions and referral fees. [Observation: Commissions and referral fees requirements are prescribed by the Code of Professional Conduct, and the related interpretive guidance, issued by the American Institute of Certified Public Accountants.~~

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Compliance with those requirements is therefore required by subdivision 4 of § 54.1-4413.3. Repeating the requirements in the regulations is unnecessary. In addition, the Board believes interpretive guidance in the regulations is unnecessary.]

- ~~1. Prohibited commissions. As provided in § 54.1-4414 D 1 of the Code of Virginia, a CPA certificate holder shall not recommend to a client any product or services for a commission, or, for a commission, recommend or refer any product or service to be supplied by a client, or receive a commission when the CPA certificate holder also performs for that client any service which involves the practice of public accounting. This prohibition applies during the period in which the CPA certificate holder is providing services which involve the giving of an assurance or during the period covered by any financial statements that were prepared by the CPA certificate holder as a part of such services.~~
- ~~2. Disclosure of permitted commissions. As provided in § 54.1-4414 E of the Code of Virginia, a CPA certificate holder who is not prohibited from accepting a commission and who is paid or expects to be paid a commission shall disclose that fact to any person or entity to whom the CPA certificate holder recommends or refers a product or service to which the commission applies.~~
- ~~3. Disclosure of referral fees. As provided in § 54.1-4414 F of the Code of Virginia, a CPA certificate holder who accepts a referral fee for recommending or referring any service of a CPA certificate holder shall disclose such payment to the client.~~

~~M. Acts discreditable. A regulant shall not commit acts discreditable to the profession, as listed in § 54.1-4413 of the Code of Virginia and this chapter. [Observation: Subsection B of § 54.1-4413.4 prescribes the acts for which the Board can take action against licensees. In addition, acts discreditable requirements are prescribed by the Code of Professional Conduct, and the related interpretive guidance, issued by the American Institute of Certified Public Accountants. Compliance with those requirements is therefore required by subdivision 4 of § 54.1-4413.3. Repeating the requirements in the regulations is unnecessary. In addition, the Board believes interpretive guidance in the regulations is unnecessary.]~~

~~N. Advertising and other forms of solicitation. A regulant shall not seek to obtain clients by advertising or other forms of solicitation in a manner that is false, misleading, or deceptive, or by coercion, overreaching or harassing conduct. [Observation: Advertising and other forms of solicitation requirements are prescribed by the Code of Professional Conduct, and the related interpretive guidance, issued by the American Institute of Certified Public Accountants. Compliance with those requirements is therefore required by subdivision 4 of § 54.1-4413.3. Repeating the requirements in the regulations is unnecessary. In addition, the Board believes interpretive guidance in the regulations is unnecessary.]~~

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~~O. Form of organization and name. A regulant shall not practice under a firm name that is false, misleading or deceptive. [Observation: Subdivision D 7 of § 54.1-4412.1 requires that the name of a firm shall not be false, misleading, or deceptive. Also, subdivision 7 of § 54.1-4413.3 has a general requirement not to “engage in any activity that is false, misleading, or deceptive.” Repeating these requirements in the regulations is unnecessary. In addition, the Board believes interpretive guidance in the regulations is unnecessary.]~~

**~~Part V
Standards of practice for CPA certificate holders~~**

[See the observation at the beginning of Part IV.]

~~18 VAC 5-21-130. Standards of practice for CPA certificate holders involved in the practice of public accounting or compiling financial statements.~~

~~CPA certificate holders shall follow the standards, as applicable under the circumstances, set forth in this section in providing services involving the practice of public accounting or compiling financial statements:~~

- ~~1. Statements of Financial Accounting Standards (Volumes I and II, June 1, 2000) issued by the Financial Accounting Standards Board;~~
- ~~2. Accounting Principles (Volume III, June 1, 2000) promulgated by the Accounting Principles Board of the American Institute of Certified Public Accountants;~~
- ~~3. Accounting Principles (Volume III, June 1, 2000) promulgated by the Committee on Accounting Procedure of the American Institute of Certified Public Accountants;~~
- ~~4. Statements on Auditing Standards (2000 Edition) issued by the Auditing Standards Board of the American Institute of Certified Public Accountants;~~
- ~~5. Statements on Standards for Accounting and Review Services (January 1, 1999) issued by the American Institute of Certified Public Accountants;~~
- ~~6. Statements of Governmental Accounting and Financial Reporting Standards (June 30, 1999) issued by the Governmental Accounting Standards Board;~~
- ~~7. Statements on Governmental Auditing Standards issued by the Comptroller General of the United States;~~
- ~~8. Statements on Standards for Attestation Engagements (January 1, 2000) issued by the Accounting and Review Services Committee of the American Institute of Certified Public Accountants; and~~

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9. ~~Standards issued by various governmental bodies with which the auditor is required to comply.~~

[Observation: As a result of the 2007 revisions, the statutes now prescribe, in § 54.1-4413.3, standards of conduct and practice. The standards prescribed by the statutes stand on their own. For example, the requirement of subdivision 6 of § 54.1-4413.3 to follow the guidance of the widely-recognized standards setters eliminates the need for much of the guidance in this section of the present regulations, such as those for standards prescribed by the Financial Accounting Standards Board, and keeps the requirements evergreen, unlike the present regulations that date them. This guidance is therefore no longer needed in the regulations.]

The dating approach used in 18VAC5-21-130 means that the regulations do not require compliance with authoritative guidance provided subsequently. Requirements to comply with standards must be written so that they remain evergreen. For example, subdivision 1 of 18VAC5-21-130 requires compliance with Statements of Financial Accounting Standards issued by the Financial Accounting Standards Board, which is typically referred to using the acronym FASB, through June 1, 2000. However, since that time, the FASB has provided significant guidance on a variety of important issues, such as measuring the impairment of assets; consolidating financial results of entities, such as the unprofitable entities that were controlled by Enron but were not consolidated into its financial statements; accounting for business combinations; and fair value measurements.

The dating in subdivision 1 also means that compliance with a new source of authoritative guidance by the FASB—FASB Staff Positions—is not required because the first FASB Staff Position was issued in 2003. Another important consequence of the dating in subdivision 1 is that, effective September 15, 2009, the FASB superseded all the authoritative accounting pronouncements and replaced the guidance in them with the Accounting Standards Codification. Revisions to the Codification will be through Accounting Standards Updates. Therefore, there are no longer any Statements of Financial Accounting Standards, and no Statements of Financial Accounting Standards will be issued in the future.

Subdivision 1 is also incomplete because it does not mention some key sources of authoritative guidance, such as consensus positions of the FASB Emerging Issues Task Force, Statements of Position of the American Institute of Certified Public Accountants, and Audit and Accounting Guides of the American Institute of Certified Public Accountants. Subdivision 1 also does not recognize international accounting standards.

There are similar deficiencies throughout 18VAC5-21-130. For example, there is no mention of the risk assessment standards issued in March 2006 by the Auditing Standards Board of the American Institute of Certified Public Accountants or of the Public Company Accounting Oversight Board, which was formed in response to widely publicized fraudulent financial reporting, such as by Enron and WorldCom.

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There are also technical deficiencies in 18VAC5-21-130. For example, the references to volumes are to compendiums that were published annually and sometimes semi-annually. They were not authoritative. It would be difficult, if not impossible, to locate volumes of the June 2000 compendium of accounting principles. As another example of the technical deficiencies, Statements on Standards for Attestation Engagements are generally issued by the Auditing Standards Board of the American Institute of Certified Public Accountants, not by its Accounting and Review Services Committee. Similarly, the Governmental Accounting Standards Board issues Statements of the Governmental Accounting Standards Board rather than Statements of Governmental Accounting and Financial Reporting Standards.]

~~18 VAC 5-21-140. Standards of practice for CPA certificate holders providing tax compliance and advice.~~

In addition to the standards of conduct established in 18 VAC 5-21-120, CPA certificate holders who provide tax compliance and tax advisory services shall comply with the standards as appropriate under the circumstances, set forth in the Statements on Responsibilities in Tax Practice promulgated by the Responsibilities in Tax Practice Committee and the Tax Executive Committee of the American Institute of Certified Public Accountants. [Observation: The Tax Executive Committee of the American Institute of Certified Public Accountants prescribes authoritative requirements for providing tax services. The requirements are prescribed through Statements on Standards for Tax Services and interpretive guidance. (Statements on Responsibilities in Tax Practice are no longer issued.) Compliance with the requirements prescribed for tax services by the Tax Executive Committee of the American Institute of Certified Public Accountants is required by subdivision 5 of § 54.1-4413.3. Repeating the requirements in the regulations is unnecessary. In addition, the Board believes interpretive guidance in the regulations is unnecessary.]

~~18 VAC 5-21-150. Standards of practice for CPA certificate holders providing consulting services.~~

A CPA certificate holder providing management consulting advisory services shall comply with the following standards of practice: [Observation: The Management Consulting Services Executive Committee of the American Institute of Certified Public Accountants prescribes authoritative requirements for providing consulting services. The requirements are prescribed through Statements on Standards for Consulting Services and interpretive guidance. Compliance with the requirements prescribed for consulting services by the Management Consulting Services Executive Committee of the American Institute of Certified Public Accountants is required by subdivision 5 of § 54.1-4413.3. Repeating the requirements in the regulations is unnecessary. In addition, the Board believes interpretive guidance in the regulations is unnecessary.]

- ~~1. Client interest. Serve the client interest by seeking to accomplish the objectives established by the understanding with the client while maintaining integrity and objectivity.~~

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- ~~2. Understanding with client. Establish with the client a written or oral understanding about the responsibilities of the parties and the nature, scope, and limitations of services to be performed, and modify the understanding if circumstances require a significant change during the engagement.~~
- ~~3. Communication with client. Inform the client of (i) conflicts of interest that may occur pursuant to interpretations of the standards of conduct established in 18 VAC 5-21-120; (ii) significant reservations concerning the scope of benefits of the engagement; and (iii) significant engagement findings or events.~~

Part VI **Standards of Practice for Firms Holding Registration Certificates**

[Observation: See the observation at the beginning of Part IV.]

~~18 VAC 5-21-160. Standards of practice for firms holding registration certificates.~~

- ~~A. Use of terms by firms. No firm having an office in Virginia shall use or assume the title or designation “certified public accountant,” “public accountant,” “CPA,” or any other title, designation, phrase, acronym, abbreviation, sign, card, or device tending to indicate that it is offering to practice or is practicing public accountancy unless at least 51% of the owners currently hold a valid CPA certificate or CPA certificate by endorsement. *[Observation: Subdivision D 1 of § 54.1-4412.1 prescribes the portion of a firm’s ownership that must be held by licensees. Repeating the requirement in the regulations is unnecessary. In addition, the Board believes additional interpretive guidance in the regulations is unnecessary.]*~~
- ~~B. Management of offices. Each firm’s office or offices located in Virginia that is offering services involving the practice of public accountancy shall be managed by a certified public accountant holding a valid CPA certificate. *[Observation: Subsection B of § 54.1-4412.1 only requires a firm to be licensed if it provides attest services or compilation services to persons or entities located in Virginia and the principal place of business in which it provides those services is in Virginia. Subsection D of § 54.1-4412.1 prescribes the ownership and supervision requirements for a firm that holds a Virginia license, and subsection C of § 54.1-4412.1 prescribes the supervision requirements for a firm that provides attest services or compilation services to persons or entities and is not required to obtain a Virginia license. The Board believes those requirements are sufficient and that an additional requirement about management of an office is unnecessary.]*~~
- ~~C. Client's records. Upon request, a firm shall furnish to the firm's client or former client, within a reasonable time, any accounting or other record prepared by and belonging to the client, or obtained from or on behalf of the client, which the regulant or another member of his firm removed from the client or the client’s premises, or had received for~~

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~~the client's account.~~ *[Observation: Requirements for client records are prescribed by the Code of Professional Conduct, and the related interpretive guidance, issued by the American Institute of Certified Public Accountants. Compliance with those requirements is therefore required by subdivision 4 of § 54.1-4413.3. Repeating the requirements in the regulations is unnecessary. In addition, the Board believes interpretive guidance in the regulations is unnecessary.]*

~~D. Ownership of regulant's working papers and records. All working papers, including but not limited to statements, programs, records, schedules, and memoranda, prepared by the regulant incident to rendering services to a client are the property of the regulant's firm absent an express agreement between the firm and the client to the contrary. Such working papers shall not be sold, transferred, or bequeathed, to anyone other than a regulant without the consent of the client, except this rule shall not be construed to (i) affect in any way the regulant's obligation to comply with a validly issued and enforceable subpoena or summons, or to prohibit a regulant's compliance with applicable laws and government regulations or (ii) prohibit a transfer to another firm licensed in Virginia in conjunction with a sale or merger of all or part of a member's practice so long as the regulant takes appropriate precautions (e.g., through a written confidentiality agreement) so that the purchaser or merging entity does not disclose any information obtained in the transaction. The purchaser or party to a merger shall not use to their advantage nor disclose any member's confidential client information that comes to their attention.~~ *[Observation: Requirements for ownership of working papers and records are prescribed by the Code of Professional Conduct, and the related interpretive guidance, issued by the American Institute of Certified Public Accountants. Compliance with those requirements is therefore required by subdivision 4 of § 54.1-4413.3. Requirements for ownership of audit and attest engagement documentation are prescribed by the Auditing Standards Board of the American Institute of Certified Public Accountants. Compliance with those requirements is therefore required by subdivision 5 of § 54.1-4413.3. Repeating the requirements in the regulations is unnecessary. In addition, the Board believes additional interpretive guidance in the regulations is unnecessary.]*

~~E. Peer review. If required, a firm shall comply with the peer review requirements of 18 VAC 5-21-70.~~ *[Observation: This is addressed in the proposed 18VAC5-22-150, which is entitled "Monitoring program and peer review" and states:*

In order to comply with subdivision D 6 of § 54.1-4412.1 of the Code of Virginia, a firm shall comply with all components of the monitoring program in which it is enrolled, except that, depending on the facts and circumstances, the Board may waive the requirement for a peer review or grant additional time for complying with the requirement.]

~~F. Power of inspection. The board and its duly authorized agents shall have the power to inspect the work product and all supporting working papers and records of all regulants in connection with an investigation or relating to compliance with statutes and regulations.~~

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[Observation: This is addressed in subdivision A 3 of the proposed 18VAC5-22-170, which is entitled “Communication between the Board and licensees” and says that when requested by the Board persons or firms “shall provide the Board documents related to the Board’s investigation of their possible violation of provisions of Chapter 44 (§ 54.1-4400 et seq.) of Title 54.1 of the Code of Virginia or Board regulations.” Subsection A of the proposed 18VAC5-22-170 also says that each “person or firm shall respond within 30 calendar days to any request for information by the Board” under the subsection.]

Part VII **Continuing Professional Education**

[Observation: The Board has had three important objectives in reconsidering the statutes and regulations—focusing on protecting the public, taking a principles-based approach, and making the guidance as clear as possible. The Board believes strongly that clarity of requirements increases the likelihood of compliance, which in turn enhances protection of the public. The Board looked carefully at whether the continuing professional education requirements in 18VAC5-21-170 are clear and easy for CPAs and the public to follow. They are not.

18VAC5-21-170 is extremely difficult to understand, far more difficult than any of the other sections of the current regulations. A significant cause of the lack of clarity is the inconsistency between subsections. This supplement to the Form TH-04 therefore takes a different approach in analyzing the proposed changes to the continuing professional education regulations than it takes in analyzing the other proposed changes to the current regulations. Rather than making observations about each subsection of the regulations in 18VAC5-21-170, this supplement provides a comprehensive, cohesive analysis of the proposed changes to the continuing professional education requirements as a whole.]

~~18 VAC 5-21-170. Continuing professional education requirements for CPA certificate applicants and for CPA certificate holders.~~

~~A. Use of CPA designation and performing services for the public.~~

- ~~1. As provided in § 54.1-4410 B of the Code of Virginia, any person referring to himself as a Certified Public Accountant or “CPA,” including the use of the “CPA” title on individual business cards, letterhead and all other documents and devices except the CPA wall certificate, and who is performing or offering to perform any services involving accounting skills or auditing skills, issuing reports on financial advisory or consulting services, preparing tax returns, or furnishing advice on tax matters, for the public, shall obtain 120 CPE credits during each CPE reporting cycle with a minimum of 20 CPE credits per CPE reporting year. The CPA certificate holder may choose the areas of study and courses.~~
- ~~2. Any person covered by this provision who, prior to implementation of § 54.1-4410 B of the Code of Virginia on October 4, 1999, provided one or more of the services~~

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~~described in subdivision 1 of this subsection, but was not required to obtain CPE, shall obtain at least 20 CPE credits in each of the CPE reporting years 2000, 2001 and 2002 and meet the 120 CPE credit requirement for the CPE reporting cycle ending December 31, 2002.~~

- ~~3.—Any person applying for a CPA certificate pursuant to 18 VAC 5-21-40 three or more years after his successful completion of the CPA exam who intends to provide the services described in subdivision 1 of this subsection shall, in addition, submit evidence of having met the 120 CPE credit requirement in subdivision 1 of this subsection as though subdivision 1 of this subsection had been applicable to the applicant during the three years prior to the date of his application.~~
- ~~4.—Any CPA certificate holder whose original CPA certification application was received by the board fewer than three years after his successful completion of the CPA exam who commences the services described in subdivision 1 of this subsection after December 31, 2000, shall have obtained 40 CPE credits within the 12 months preceding the date such services are first offered to the public and obtain the remaining 80 CPE credits by the end of the second CPE reporting year following the date of commencing such services with no less than 20 CPE credits in each of these two CPE reporting years. In addition, such CPE shall include the most recent ethics CPE course.~~

~~B.—Use of CPA designation and performing services other than for the public.~~

- ~~1.—As provided in § 54.1-4410 C of the Code of Virginia, effective July 1, 2002, any person referring to himself as a Certified Public Accountant or “CPA,” including the use of the “CPA” title on individual business cards, letterhead and all other documents and devices except the CPA wall certificate, who is performing or offering to perform any services involving accounting skills or auditing skills, issuing reports on financial advisory or consulting services, preparing tax returns, or furnishing advice on tax matters, for an employer or other organization and not for the public, or who is employed as an educator in the field of accounting, shall meet the following CPE requirements as a condition of renewal of the person’s CPA certificate: (i) for the three-year reporting period beginning January 1, 2003, a minimum of 45 CPE credits with a minimum of 10 CPE credits per year, (ii) for the three-year reporting period beginning January 1, 2006, a minimum of 90 CPE credits with a minimum of 15 CPE credits per year, and (iii) for the three-year reporting periods beginning on or after January 1, 2009, a minimum of 120 CPE credits with a minimum of 20 CPE credits per year. The CPA certificate holder may choose the areas of study and courses.~~
- ~~2.—Individuals failing to meet the CPE requirements may be subject to requalification, including possible re-examination and submission of experience qualifications. The~~

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board may, at its discretion, waive or defer CPE requirements so long as such waiver or deferral is in the public interest.

- ~~3. Any person applying for a CPA certificate pursuant to 18 VAC 5-21-40 three or more years after his successful completion of the CPA exam who intends to provide the services described in subdivision 1 of this subsection shall, in addition, submit evidence of having met the CPE requirement of subdivision 1 of this subsection as though subdivision 1 of this subsection had been applicable to the applicant during the three years prior to the date of his application. Furthermore, if such person obtained his CPA certificate at a time when he did not intend to provide services for the public and subsequently decides to provide for the public the services described in subdivision A 1 of this section, then such regulant shall, prior to performing such services, meet the 120 CPE credit requirement of subdivision A 1 of this section.~~

~~C. Use of CPA designation and not performing services.~~

- ~~1. Any CPA certificate holder who is not performing or offering to perform any of the services described in subdivision A 1 or B 1 of this section is not required to meet CPE requirements.~~
- ~~2. Any CPA certificate holder who ceases to perform services for the public shall meet the CPE requirements described in subdivision A 1 of this section for any reporting year in which he performed those services. Any CPA certificate holder who performs services for the public for less than a complete reporting cycle shall complete at least 20 CPE credits in each reporting year that he did perform services for the public during the reporting cycle.~~

~~D. CPE in standards of conduct, Code of Virginia statutes relating to public accountancy, and Board's regulations.~~

~~Beginning with the CPE reporting year ending immediately subsequent to the year in which these regulations become effective, each CPA to which the CPE requirements in subsections A and B of this section apply will obtain annually two CPE credits relating to standards of conduct, Chapter 44 (§ 54.1-4400 et seq.) of Title 54.1 of the Code of Virginia, and regulations of the Board. The course will be a self-contained course presented in not more than two CPE credit parts and may be presented in conjunction with other CPE programs. The course may be a self-study course so long as the self-study requirements of subdivision F 3 of this section are met. An outline of the required content for the course will be provided by the Board to CPE providers who must state in their ethics CPE course material and related catalog summaries whether the content of the course includes the material required by the Board for the calendar year the course is provided.~~

~~E. Requirements for retaining records.~~

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- ~~1. It is the responsibility of the CPA certificate holder to retain evidence of satisfactory completion of CPE credits for a period of three years from the anniversary date of renewal. Such documentation shall be in the form of the certificate of completion provided by the sponsor, verification from the institution offering the course, written statement from the course provider verifying the regulant's attendance, or any other documentation deemed agreeable by the board.~~
- ~~2. The CPA certificate holder shall provide such documentation to the board or its authorized agent upon request.~~

~~F. Continuing professional education credit.~~

- ~~1. One credit hour shall be given for each 50-minute period of instruction. One semester hour of college credit is 15 CPE credits and one quarter hour of college credit is 10 CPE credits.~~
- ~~2. A CPA certificate holder who instructs courses that qualify for CPE credit for participants will be awarded two additional CPE credits for each CPE credit of instruction. The instructor shall retain evidence to support the request for CPE credit. The instructor shall be given no CPE credit for subsequent sessions involving substantially identical subject matter. The CPE credit given for instructing shall not exceed 30 CPE credits per CPE reporting cycle.~~
- ~~3. CPE credits for successful completion of a self-study course shall be established by the sponsor according to the type of CPE self-study program and pre-tests to determine average completion time. Interactive self-study programs shall receive CPE credit equal to the average completion time. Noninteractive self-study programs shall receive CPE credit equal to one-half of the average completion time. For example, an interactive self-study program that takes an average of two contact hours to complete shall receive two CPE credits, and a noninteractive self-study program that takes an average of two contact hours to complete shall receive one CPE credit.~~

[The analysis of the proposed changes follows.]

1. The proposed 18VAC5-22-90, which is entitled "Continuing professional education," would replace 18VAC5-21-170. In addition, the proposed 18VAC5-22-40, which is entitled "Determining whether a person who holds a Virginia license is providing services to the public using the CPA title or to an employer using the CPA title," clarifies that the requirement to obtain continuing professional education depends on whether services are provided, not whether the holder of the license tells the person or entity for whom he provides services that he is a CPA. A summary of the effect on the continuing professional education requirements of adding the proposed 18VAC5-21-40 and replacing 18VAC5-21-170 with the proposed 18VAC5-22-90 follows.

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- a. *The clarity of the continuing professional education requirements will be improved significantly. See the discussion in paragraph 2 of this analysis.*
- b. *The terminology and definitions will conform with the terminology and definitions now used in the statutes as a result of the 2007 revisions. See the discussion in paragraphs 3 and 4.*
- c. *Effective dates and cites that are no longer relevant will be eliminated. See the discussion in paragraph 5.*
- d. *The transition period presently available for persons who provide services to an employer using the CPA title will not be affected. See the discussion in paragraphs 6 through 10.*
- e. *There will be no change in the amount of continuing professional education required. See the discussion in paragraphs 11 through 13.*
- f. *The requirement to obtain continuing professional education in ethics will focus on professional ethics rather than the statutes and regulations and provide situations in which an ethics course acceptable to the board of accountancy of another state in which the person holds a license will satisfy the requirement. See the discussion in paragraphs 14 through 17.*
- g. *It will be clear that the requirement to obtain continuing professional education cannot be avoided by not saying that the person providing services is a CPA. See the discussion in paragraphs 18 and 19.*
- h. *The holder of a Virginia license will still be able to use the CPA title in Virginia without obtaining continuing professional education as long as he does not provide services to the public using the CPA title or to an employer using the CPA title. If he begins providing those services, he will be subject to the continuing professional education requirements prospectively and will also be subject to a catch-up requirement that must be met before he begins providing services. See the discussion in paragraphs 20 through 25.*
- i. *It will be clear how to apply the three-calendar-year requirements after a person who has not previously been licensed first obtains a Virginia license. See the discussion in paragraphs 26 and 27.*
- j. *It will be clear when a person who has not previously been licensed must obtain continuing professional education prior to applying for a Virginia license. See the discussion in paragraphs 28 through 31.*

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- k. The Board will continue to have the ability to waive or defer the continuing professional education requirements. See the discussion in paragraphs 32 and 33.*
- l. A holder of a Virginia license will still need to be able to document compliance with the continuing professional education requirements. See the discussion in paragraph 34.*
- m. It will be clear that continuing professional education can be obtained through a variety of forums. See the discussion in paragraphs 35 through 37.*
- n. There will be no change to the amount of continuing professional education obtained through making presentations that can be considered in determining whether a person has complied with the continuing professional education requirements. In addition, there will continue to be no limit on the amount of continuing professional education obtained through writing that can be considered. See the discussion in paragraphs 38 through 40.*

Improving the clarity of the requirements

2. As discussed at the beginning of Part VII, the Board looked carefully at whether the continuing professional education requirements in 18VAC5-21-170 are clear and easy for CPAs and the public to follow. They are not. 18VAC5-21-170 is extremely difficult to understand. The Board believes strongly that clarity of the requirements increases the likelihood of compliance, which in turn enhances protection of the public. To accomplish this, it is necessary to substantially revise the way the continuing professional education requirements are presented.

Conforming terminology and definitions with the statutes

- 3. A number of changes are needed just to conform with terminology and definitions now used in the statutes as a result of the 2007 revisions. A summary of the changes needed follows.*
 - a. The term “use of CPA designation and performing services for the public” should be replaced with the term “providing services to the public using the CPA title” that is used and defined in the revised statutes.*
 - b. The term “use of CPA designation and performing services other than for the public” should be replaced with the term “providing services to an employer using the CPA title” that is used and defined in the revised statutes.*
 - c. The term “CPA certificate” is no longer appropriate. Under the revised statutes, there is no distinction between the terminology used to describe a license for a person and the license for a firm, and there are no longer CPA certificates.*
 - d. The term “CPA exam” in the current regulations should be replaced with the term “CPA examination” that is used and defined in the revised statutes.*

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- e. The term “CPE” should be replaced with the term “continuing professional education” that is used and defined in the revised statutes.*

4. Where appropriate, the remaining discussion of 18VAC5-21-170 in this supplement uses terminology and definitions that conform with the terminology and definitions in the revised statutes. For example, the discussion of the categories for which 18VAC5-21-170 prescribes continuing professional education requirements uses the term “providing services to the public using the CPA title” that is used in the revised statutes rather than the term “use of CPA designation and performing services for the public” that is used in 18VAC5-21-170.

Eliminating effective dates and cites that are no longer relevant

5. A summary of the effective dates and cites in 18VAC5-21-170 that are no longer relevant follows.

- a. Subdivisions A 1 and B 1 refer to Code sections that have been repealed.*
- b. Subdivision A 2 prescribes requirements for the three-calendar-year periods beginning after 1999.*
- c. Subdivision A 4 prescribes requirements for a person providing services after December 31, 2000.*
- d. The requirements in subsection D are described as effective “beginning with the CPE reporting year ending immediately subsequent to the year in which these regulations become effective.” Those requirements are already effective.*

Retaining the transition period presently available for persons who provide services to an employer using the CPA title

6. Subsection B of 18VAC5-21-170 provides a transition period for persons who provide services to an employer using the CPA title but do not provide services to the public using the CPA title. Prior to July 1, 2002, those persons were not required to obtain continuing professional education. Under subsection B of 18VAC5-21-170, effective with the three-calendar-year period beginning January 1, 2009, the same continuing professional education requirements apply to persons who provide services to the public using the CPA title and persons who provide services to an employer using the CPA title. The transition period is broken into three segments:

- a. for each of the three-calendar-year periods beginning January 1, 2003, 2004, and 2005, a minimum of 45 hours is required;*
- b. for each of the three-calendar-year periods beginning January 1, 2006, 2007, and 2008, a minimum of 90 hours is required; and*

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- c. *for each of the three-calendar-year periods beginning on or after January 1, 2009, a minimum of 120 hours is required.*

(These descriptions conform with the way the transition provision is intended to be applied, but they differ from the language in subsection B of 18VAC5-21-170. For example, subsection B of 18VAC5-21-170 describes the first segment as “the three-year reporting period beginning January 1, 2003.” However, the segment applies to three three-calendar-year periods—the ones beginning January 1, 2003, January 1, 2004, and January 1, 2005.)

7. *The first segment ended with the three-calendar-year period beginning January 1, 2005, and ending December 31, 2007, but the second segment will not end until the three-calendar-year period ending December 31, 2010. Subsection B of the proposed 18VAC5-22-90 makes it clear that the proposed 18VAC5-22-90 carries forward the remaining transition period, saying—*

If during the current calendar year a person who holds a Virginia license provided services to an employer using the CPA title and did not provide services to the public using the CPA title, he shall have obtained a minimum number of hours of continuing professional education determined as follows:

1. *If the current calendar year is 2009 or 2010, the person shall have obtained at least 90 hours of continuing professional education during the three-calendar-year period ending with the current calendar year. For each of the calendar years in that period, he shall have obtained at least 15 hours of continuing professional education, including an ethics course of at least two hours.*
2. *If the current calendar year is 2011 or later, the person shall have obtained at least 120 hours of continuing professional education during the three-calendar-year period ending with the current calendar year. For each of the calendar years in that period, he shall have obtained at least 20 hours of continuing professional education, including an ethics course of at least two hours.*

8. *As an observation, 18VAC5-21-170 refers to three-calendar-year periods according to when they begin. However, a person’s status may change during a three-calendar-year period. To illustrate, assume that—*

- a. *during 2007 a person who holds a Virginia license provides services to the public using the CPA title,*
- b. *in 2008 he does not provide services to the public using the CPA title or to an employer using the CPA title, and*
- c. *in 2009 he provides services to an employer using the CPA but not to the public using the CPA title.*

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9. *During that three-calendar-year period, the person has touched on three sections of 18VAC5-21-170:*

- a. *subsection A, which addresses the requirement for a person who provides services to the public using the CPA title;*
- b. *subsection C, which exempts a person from the requirement to obtain continuing professional education as long as he does not provide services to the public using the CPA title or to an employer using the CPA title; and*
- c. *subsection B, which addresses the requirement for a person who provides services to an employer using the CPA title but does not provide services to the public using the CPA title.*

10. *Under the current regulations, in 18VAC5-21-170, for the three-calendar-year period beginning January 1, 2007, and ending December 31, 2009, the person would be subject to the requirements of subsection B, even though during the first calendar year in the period—2007—he was providing services to the public, which is discussed in subsection A. It is the status of the person in the third, or current, calendar year in a three-calendar-year period that determines the applicability of the continuing professional education requirements for a three-calendar-year period. The proposed 18VAC5-22-90 therefore refers to three-calendar-year periods according to the current, or last, calendar year in the period. However, that clarifies, rather than changes, the requirements of the current regulations.*

Not changing the amount of continuing professional education required

11. ***The categories and the related requirements are the same.*** *18VAC5-21-170 generally addresses the need for three categories of holders of a Virginia license to obtain continuing professional education:*

- a. *Persons who provide services to the public using the CPA title. Those persons are required to obtain a minimum of 120 hours of continuing professional education during each three-calendar-year period. For each of the calendar years in that period, the person is required to have obtained a minimum of 20 hours of continuing professional education, including an ethics course of at least two hours.*
- b. *Persons who provide services to an employer using the CPA title but do not provide services to the public using the CPA title. Those persons are subject to a transition period. At the end of the transition period, they will be subject to the same requirements as holders of a Virginia license who provide services to the public using the CPA title. During the transition period, they are subject to requirements that gradually increase. However, during the transition period, they are required to take an ethics course of at least two hours during each calendar year.*

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- c. *Persons who do not provide services to the public using the CPA title or to an employer using the CPA title. Those persons are not required to obtain continuing professional education.*

The proposed 18VAC5-22-90 prescribes the same requirements for the same three categories in subsections A, B, and D.

12. *The applicability of the categories in determining the requirements for a three-calendar-year period is the same.* *As discussed in paragraphs 8 through 10, although 18VAC5-21-170 generally talks in terms of three-calendar-year periods according to when they begin, which of the three categories applies is determined based on the third, or current, calendar year. The proposed 18VAC5-22-90 makes that clear. For example, the first sentence of subsection A says:*

If during the current calendar year a person who holds a Virginia license provided services to the public using the CPA title, he shall have obtained at least 120 hours of continuing professional education during the three-calendar-year period ending with the current calendar year.

13. *Consistent terminology is used to describe reporting periods.* *Subsection A of 18VAC5-21-170 uses the terms “CPE reporting cycle” and “CPE reporting year.” Subsection B of 18VAC5-21-170 does not use either of those terms but instead uses the terms “three-year reporting period” and “year.” The Board believes the use of different terms was unintentional and that the terms “CPE reporting cycle” and “three-year reporting period” have the same meaning and the terms “CPE reporting year” and “year” have the same meaning. Therefore, for example, for both categories the 120-hour requirement applies to every three-calendar-year period. Although 18VAC5-21-170 does not define when a reporting period ends, the Board has taken the position that a reporting year is a calendar year. The proposed 18VAC5-22-90 therefore uses the terms “calendar year” and “three-calendar-year period” when discussing reporting periods.*

Focusing the requirement to obtain continuing professional education in ethics on professional ethics and providing situations in which another state’s ethics course will satisfy the requirement

14. *Prior to the 2007 revisions, the statutes said, in subsection D of § 54.1-4410, “The Board shall establish by regulation a requirement for continuing professional education in ethics for CPAs.” That requirement was added to the statutes in response to the highly publicized fraudulent financial reporting by Enron and WorldCom and was intended to ensure that persons who hold a Virginia license receive continuing professional education in professional ethics.*

15. *However, the description of the content of the required continuing professional education added to the regulations in the definition of “ethics CPE” in 18VAC5-21-10 and in subsection D of 18VAC5-21-170 has three parts—standards of conduct, the statutes, and the regulations.*

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- a. *These three parts read as if standards of conduct are separate from the regulations. However, the standards of conduct are defined in the current regulations. 18VAC5-21-10 defines “standards of conduct” as “the standards set forth in 18VAC5-21-120.” Those standards are generally broad and only address some aspects of professional ethics. (As an observation, § 54.1-4413.3 overrides 18VAC5-21-120.)*
- b. *Including the remaining regulations and all the statutes in the required subject matter broadens the course content to include compliance with all Virginia licensing requirements.*

16. *To emphasize that the objective is to require annual continuing professional education in professional ethics, the proposed 18VAC5-22-90 refers to the continuing professional education as an “ethics course.” The proposed 18VAC5-22-90 requires that the course be “at least two hours.” Subsection D of 18VAC5-21-170 requires that the education be obtained through a course that is no longer than two hours. The Board believes there is no need to limit the length.*

17. *The proposed 18VAC5-22-90 also addresses a practice issue with the ethics course that is not addressed in 18VAC5-21-170. Most states now require that holders of a license of their state attend an ethics course at prescribed intervals, but the requirements for such a course often vary. As a result, a person who holds the license of two or more states may be faced with meeting differing requirements for an ethics course. Accordingly, subsections A and B of the proposed 18VAC5-22-90 prescribe situations in which the requirements for an ethics course can be met by attending an ethics course “acceptable to the board of accountancy of another state in which the person holds a license.”*

Clarifying that the continuing professional education requirement cannot be avoided by not saying that the person providing services is a CPA

18. *Introducing each of the two categories in subsections A and B of 18VAC5-21-170 with the phrase “use of the CPA designation and” has caused confusion as to whether the holder of a Virginia license could provide services but be exempt from the requirement to obtain continuing professional education as long as he does not tell the person or entity for whom he provides the services that he is a CPA. That is not the Board’s intention.*

- a. *Subsections B and C of § 54.1-4410 of the statutes in effect prior to the 2007 revisions and subdivisions A 1 and B 1 of 18VAC5-21-170 introduce the requirement to obtain continuing professional education in order to provide services to the public or to an employer with the phrase—*

any person referring to himself as a Certified Public Accountant or “CPA,” including the use of the “CPA” title on individual business cards, letterhead and all other documents and devices [emphasis added] except the CPA wall certificate.”

- b. *Section 54.1-4400, before the 2007 revisions, defined “CPA title” as—*

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"CPA title" means using "CPA," "Certified Public Accountant," "public accountant," or "CPA firm" in any form or manner that communicates (including but not limited to any title, phrase, acronym, abbreviation, business cards, CPA wall certificate, letterhead, reports, tax returns, sign, card, or any other document or device [emphasis added]) that the individual or firm holds a currently valid CPA certificate or permit.

- c. *The Board viewed the phrase "any other document or device" as conveying a broad application and to clarify its broad application, among other things, added "Internet postings" to the definition that is now in § 54.1-4400:*

"Using the CPA title in Virginia" means using "CPA," "Certified Public Accountant," or "public accountant" (i) in any form or manner of verbal communication to persons or entities located in Virginia or (ii) in any form or manner of written communication to persons or entities located in Virginia, including but not limited to the use in any abbreviation, acronym, phrase, or title that appears in business cards, the CPA wall certificate, Internet postings [emphasis added], letterhead, reports, signs, tax returns, or any other document or device [emphasis added].

- d. *The Board has for some time maintained a section of its website listing holders of a Virginia license. The section is intended to enable the public to readily determine whether someone holds a Virginia license, and it is accessed frequently by members of the public. The Board therefore considers holders of a Virginia license to be using the CPA title in Virginia.*
- e. *This view protects the public. Based on the Board's experience, it is not reasonable to conclude that the holder of a Virginia license provides services to the public or an employer without the person or entity for whom the services are provided knowing through verbal or written communication that the person is a CPA. It is therefore reasonable to require that the holder of a Virginia license be subject to continuing professional education requirements prior to providing those services.*

19. *This position has broader application than just continuing professional education. Accordingly, it is addressed in a separate proposed regulation, 18VAC5-22-40, which is entitled "Determining whether a person who holds a Virginia license is providing services to the public using the CPA title or to an employer using the CPA title" and says:*

For the purpose of determining whether a person who holds a Virginia license is providing services to the public using the CPA title or to an employer using the CPA title, as those terms are defined in § 54.1-4400 of the Code of Virginia, because of the written information readily available to the public through the Board's Internet postings, holding a Virginia license constitutes using the CPA title. Accordingly, a person who holds a Virginia license—

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1. *is providing services to the public using the CPA title if he provides services that are subject to the guidance of the standard-setting authorities listed in the standards of conduct and practice in subdivisions 5 and 6 of § 54.1-4413.3. [This is the definition in § 54.1-4400 of “providing services to the public using the CPA title.”]*
2. *is providing services to an employer using the CPA title if he provides to an entity services that require the substantial use of accounting, financial, tax, or other skills that are relevant, as determined by the Board. [This is the definition in § 54.1-4400 of “providing services to an employer using the CPA title.”]*

Therefore, the proposed 18VAC5-22-40 will clarify that whether a person who holds a Virginia license is required to obtain continuing professional education depends on whether he provides services, rather than whether he tells the person or entity for whom he provides the services that he is a CPA.

Retaining the exemption from the requirement to obtain continuing professional education that is presently available for a holder of a Virginia license who does not provide services to the public or to an employer

20. *Under subsection C of 18VAC5-21-170, the holder of a Virginia license does not need to obtain continuing professional education as long as he does not provide services to the public using the CPA title or to an employer using the CPA title. The proposed 18VAC5-22-90 will continue to exempt those persons from the requirement to obtain continuing professional education. The first sentence of subsection D says:*

If during the current calendar year a person who holds a Virginia license did not provide services to the public using the CPA title or to an employer using the CPA title, he is not required to have obtained continuing professional education during the three-calendar-year period ending with the current calendar year.

21. *While subsection C of 18VAC5-21-170 addresses the applicability of the continuing professional education requirements to reporting periods in which the person previously provided services to the public, it does not address whether the continuing professional education requirements apply retrospectively if he subsequently decides to provide services to the public using the CPA title or to an employer using the CPA title. The Board believes the lack of a catch-up requirement in 18VAC5-21-170 is an oversight. For example, it is not reasonable to conclude that it was ever intended that the holder of a Virginia license could not obtain continuing professional education for ten years and then begin providing services to the public using the CPA title.*

22. *The Board believes that the public is best served if a person has sufficient continuing professional education at the time he provides services to the public using the CPA title or to an employer using the CPA title. A holder of a Virginia license should only be permitted to be*

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exempt from the requirement to obtain continuing professional education if he does not provide services to the public using the CPA title or to an employer using the CPA title. If he subsequently decides to begin providing those services, the public is best served if he is required to obtain continuing professional education, including the most recent ethics course available, prior to providing the services.

23. *Subsection D of the proposed 18VAC5-22-90 recognizes that the amount of continuing professional education increases with the length of the period during which the person was exempt from the requirement to obtain continuing professional education. However, it also recognizes that because of rapid changes in the knowledge needed, there is a limit to the amount of continuing professional education needed for the period. Accordingly, subsection D of the proposed 18VAC5-22-90—*

- a. requires that the person have at least 120 hours of continuing professional education prior to providing the services and*
- b. states that continuing professional education obtained during the three calendar years prior to the current calendar year and from the start of the current calendar year to when he begins providing the services shall be considered in determining whether the person has complied with the requirement.*

24. *Illustrations of the effect of complying with this requirement follow.*

- a. For the past ten years, a person who holds a Virginia license has worked for a not-for-profit organization as development director and has not provided services to the public using the CPA title or to an employer using the CPA title. However, this year he wants to form a firm to provide tax planning and consulting services. Under subsection D of the proposed 18VAC5-22-90, he would need to obtain at least 120 hours of continuing professional education prior to providing those services. He could obtain all those hours in the current year prior to providing those services. However, any continuing professional education he obtained in the three preceding calendar years would also count toward the requirement.*
- b. A person who holds a Virginia license was the sole member of a limited liability company that provided income tax services and compilation services through 2008 and was therefore required to obtain continuing professional education. At the end of 2008, he sold his equity interest in the entity. He traveled extensively in 2009 and did not work or obtain continuing professional education. At the beginning of 2010, he was offered the opportunity to serve as the chief financial officer of an entity. Under subsection D of the proposed 18VAC5-22-90, he would be required to obtain at least 120 hours of continuing professional education prior to starting that position. However, the continuing professional education he obtained during 2007 and 2008 would count toward that requirement. For example, if he obtained 40 hours during each of those years, he would only need to obtain an additional 40 hours during 2010 prior to starting his new position.*

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25. *Retrospective application of the requirement to take the ethics course annually is not practical since ethics courses are updated annually and are not available after the year in which they are introduced. Accordingly, subsection D of the proposed 18VAC5-22-90 requires that the person obtain continuing professional education from an ethics course of at least two hours that conforms with the “requirements prescribed by the Board for the calendar year in which the person begins providing the services.”*

Clarifying how to apply the three-calendar-year requirements when a previously unlicensed person obtains a Virginia license

26. *Section 54.1-4400 defines “continuing professional education” as “the education that a person obtains after passing the CPA examination [emphasis added] and that relates to services provided to an employer in academia, government, or industry using the CPA title or to services provided to the public using the CPA title.” 18VAC5-21-170 does not address how to apply the three-calendar-year requirements to a person who did not hold a Virginia license or the license of another state during one or both of the two preceding calendar years. However, subsection C of the proposed 18VAC5-22-90 provides guidance.*

- a. *Under subdivision C 1 of the proposed 18VAC5-22-90, if the person became licensed during the current calendar year, he shall be considered to have met the requirements for the three-calendar-year period ending with the current calendar year.*
- b. *Under subdivision C 2, if the person became licensed during the preceding calendar year, he shall be considered to have met the requirements for the three-calendar-year period ending with the current calendar year if during the current calendar year he obtained at least the minimum number of hours of continuing professional education required by the subsection for the current calendar year, including an ethics course of at least two hours.*
- c. *Under subdivision C 3, if the person became licensed during the calendar year prior to the preceding calendar year, he shall be considered to have met the requirements for the three-calendar-year period ending with the current calendar year if during the current calendar year and the preceding calendar year he obtained at least the minimum number of hours of continuing professional education required by the subsection for each of the years, including for each year an ethics course of at least two hours.*

27. *To illustrate application of the proposed guidance, assume that the person obtained his Virginia license in 2010.*

- a. *For the three-calendar-year period 2008, 2009, and 2010 the person would not be required to obtain continuing professional education.*

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- b. For the three-calendar-year period 2009, 2010, and 2011, the person would be required to have obtained at least 20 hours, including an ethics course of at least two hours, for 2011.*
- c. For the three-calendar-year period 2010, 2011, and 2012, the person would be required to have obtained at least 20 hours in 2011 and in 2012, including an ethics course of at least two hours in 2011 and in 2012.*
- d. For the three-calendar-year period, 2011, 2012, and 2013, the person would be required to have obtained at least 120 hours and for each calendar year in the period to have obtained at least 20 hours, including an ethics course of at least two hours.*

Clarifying when a person needs to obtain continuing professional education after he passes the CPA examination but before he applies for a Virginia license

28. 18VAC5-21-170 prescribes requirements to obtain continuing professional education between passing the CPA examination and applying for a Virginia license in some situations.

- a. Subdivision A 3 has a requirement for a person who has not held a license, applies for a Virginia license at least three years after passing the CPA examination, and intends to provide services to the public using the CPA title. In that situation, the person is required to obtain 120 hours of continuing professional education prior to applying for a Virginia license. 18VAC5-21-170 does not address whether that person would also need to take an ethics course prior to applying for a Virginia license.*
- b. Subdivision A 4 has a requirement for a person who has not held a license, applies for a Virginia license fewer than three years after passing the CPA examination, and begins providing services to the public using the CPA title. In that situation, the person is required to have obtained 40 hours of continuing professional education within the 12 months prior to when those services are first offered and to obtain an additional 80 hours of continuing professional education by the end of the second reporting year following when those services are provided. In addition, subdivision A 4 says “such CPE shall include the most recent ethics CPE course” but does not address whether the course should be taken prior to offering to provide services to the public, prior to providing services to the public, or by the end of the first reporting year after the services are provided.*
- c. Subdivision B 3 has two retrospective requirements for a person who has not held a license and applies for a Virginia license at least three years after passing the CPA examination.*
 - 1. If the person has not held a license, applies for a Virginia license at least three years after passing the CPA examination, and intends to provide services to an employer using the CPA title (but not to the public using the CPA title), he is retrospectively*

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subject to the continuing professional education requirement that would have applied during “the three years prior to the date of his application.”

2. *If the person did not intend to provide services to the public using the CPA title at the time he obtained a Virginia license but subsequently decides to provide those services, he must obtain 120 hours of continuing professional education prior to performing such services. The Board believes it is not clear how to apply this provision but interprets this retrospective application as relating only to periods when persons who provided services to an employer using the CPA but not to the public using the CPA title were not required to obtain continuing professional education.*

29. *Subsection E of the proposed 18VAC5-22-90 addresses when a person needs to obtain continuing professional education after he passes the CPA examination but before he applies for a Virginia license. Subsection E is consistent with how the Board interprets the requirements of the current regulations discussed in paragraph 28.*

30. *The Board believes a person who has not held a license and applies for a Virginia license does not need to obtain continuing professional education prior to applying for the license if the period between passing the CPA examination and applying for a Virginia license is short. Accordingly, subsection E of the proposed 18VAC5-22-90 only requires continuing professional education if a person applies for a Virginia license after the end of the calendar year in which he passes the CPA examination. Therefore, if he applies for a license by the end of the calendar year in which he passes the CPA examination, he is not required to have obtained continuing professional education prior to applying for the license.*

31. *The Board believes the amount of continuing professional education needed increases with the length of the period between passing the CPA examination and applying for a license. However, the Board also believes that because of rapid changes in the knowledge needed, there is a limit to the amount of continuing professional education needed for the period. Subsection E of the proposed 18VAC5-22-90 therefore requires 40 hours for each calendar year within the period, with a maximum of 120 hours.*

- a. *The requirement of subsection E of the proposed 18VAC5-22-90 can be met with continuing professional education obtained during the three calendar years prior to the calendar year in which the person applies for the license and from the start of that calendar year to when he applies for the license. That reflects the Board’s view that continuing professional education obtained longer ago than that will likely no longer be relevant.*
- b. *Subsection E of the proposed 18VAC5-22-90 also requires the person to have taken an ethics course of at least two hours that complies with the requirements prescribed by the Board for the calendar year in which the person applies for the license. Retrospective application of the requirement to take an ethics course annually is not practical because*

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ethics courses are updated annually and are not available after the year in which they are introduced.

Continuing the ability of the Board to waive or defer the continuing professional education requirements

32. *Subdivision B 2 of 18VAC5-21-170 provides nonmonetary penalties the Board may impose if a person does not comply with the continuing professional education requirements and gives the Board the ability to waive or defer the continuing professional education requirements “so long as such waiver or deferral is in the public interest.” However, that subsection is in the context of a person who provides services to an employer using the CPA title. The section on persons who provide services to the public using the CPA title does not have a similar discussion. The Board believes that is unintentional.*

33. *Subsection A of § 54.1-4413.4 prescribes the penalties the Board may impose. The Board therefore believes there is no need for the regulations to address penalties. However, subsection H of the proposed 18VAC5-22-90, which applies to all holders of a Virginia license, continues the Board’s ability to waive or defer the continuing professional education requirements:*

Depending on the facts and circumstances, the Board may waive all or part of the continuing professional education requirement for one or more calendar years or grant additional time for complying with the continuing professional education requirement, provided that the waiver or deferral is in the public interest.

Continuing to require a holder of a Virginia license to be able to document compliance with the continuing professional education requirements

34. *Subsection E of 18VAC5-21-170 requires the holder of a Virginia license to retain documentation of complying with the continuing professional education requirements. There are a number of places in the current regulations that prescribe documentation requirements. Among other things, that approach raises the question of whether documentation of compliance with the statutes and regulations is required only when specifically mentioned in the statutes and regulations. The Board therefore believes a more effective approach is to eliminate the specific requirements and replace them with the general requirement that is in subdivision A 1 of proposed 18VAC5-22-170, which is entitled “Communication between the Board and licensees:”*

When requested by the Board, persons or firms applying for the issuance, renewal, or reinstatement of a Virginia license or for lifting the suspension of the privilege of using the CPA title in Virginia or providing attest services or compilation services for persons or entities located in Virginia shall provide the Board with support for their conclusion that they have complied with applicable provisions of Chapter 44 (§ 54.1-4400 et seq.) of Title 54.1 of the Code of Virginia and Board regulations.

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Clarifying that continuing professional education can be obtained through a variety of forums

35. *Subsection F of 18VAC5-21-170 prescribes requirements for how to determine hours of continuing professional education obtained from “instruction,” “instructing courses,” taking courses for “college credit,” and taking self-study courses. Subsection F of the proposed 18VAC5-22-90 clarifies that a variety of forums are acceptable.*

- a. *The current regulations, in 18VAC5-21-10, define “continuing professional education” as—*

an integral part of the lifelong learning required to provide competent service to the public; the formal set of activities that enables accounting professionals to maintain and increase their professional competence.

- b. *The July 1, 2007, revisions to the statutes added a similar definition to the statutes in § 54.1-4400:*

“Continuing professional education” means the education that a person obtains after passing the CPA examination and that relates to services provided to an employer in academia, government, or industry using the CPA title or to services provided to the public using the CPA title.

- c. *Both definitions convey the belief that continuing professional education is a broad notion of the knowledge needed for the holder of a Virginia license to be able to competently provide services to the public or an employer.*

- d. *Subsection F of 18VAC5-21-170 prescribes requirements for some forums for obtaining continuing professional education, but it does not say that those are the only acceptable forums. Therefore, for example, the holder of a Virginia license could rightly conclude that all of the 120-hour requirement for a three-calendar-year period could be met with—*

1. *30 hours from making presentations, consisting of 10 hours during each of the three years,*
2. *6 hours from taking the two-hour ethics course during each of the three years,*
3. *64 hours from writing in one of the years in the three-year period, and*
4. *20 hours from obtaining 10 hours of additional continuing professional education during each of the other two years in the period.*

36. *The proposed 18VAC5-22-90 provides some parameters that are not in 18VAC5-21-170. Subsection F of the proposed 18VAC5-22-90 says acceptable continuing professional education*

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may be obtained through a variety of forums “provided there is a means of demonstrating that the education was obtained.” It then lists five forums that are acceptable:

- a. Subdivision F 1 says attendance at seminars and education conferences is an acceptable forum “provided that the instructors have appropriate knowledge of the subject matter and use appropriate teaching materials and that attendance is monitored in a manner that can be verified by the Board.”*
- b. Subdivision F 2 says that taking courses at an accredited institution for credit is an acceptable forum.*
- c. Subdivision F 3 says self-study courses are acceptable, “provided there is a method for determining that the person met the learning objectives.”*
- d. Subdivision F 4 says making a presentation at a professional seminar, educational conference, or in a classroom setting is an acceptable forum “provided the person has appropriate knowledge of the subject matter and uses appropriate teaching materials.”*
- e. Subdivision F 5 says writing material is an acceptable forum provided that it “is relevant to providing services to an employer using the CPA title or to the public using the CPA title,” that it is “formally reviewed by an independent party,” and that it “is published in a book, magazine, or similar publication that is used by persons who provide services to an employer using the CPA title or to the public using the CPA title.”*

37. Subsection F of the proposed 18VAC5-22-90 then says, “Whether other forums are acceptable shall be determined by the Board on a case-by-case basis.” For example, provided there is a means of demonstrating that the education was obtained, taking courses at an accredited institution without credit would likely be an acceptable forum.

Not changing the amounts of continuing professional education from instructing and writing that count toward the continuing professional education requirement

38. Although 18VAC5-21-170 does not mention credit from writing material, subdivision F 2 of 18VAC5-21-170 says that no more than 30 hours from instructing shall be considered during each three-calendar-year period. Subsection G of the proposed 18VAC5-22-90 retains the limit in 18VAC5-21-170 on continuing professional education from instructing and does not mention credit from writing material.

39. Except that subsection G provides a limit on the amount of continuing professional education from instructing that is acceptable annually, the requirements of subsections F and G of the proposed 18VAC5-22-90 are consistent with those in the Statement on Standards for Continuing Professional Education (CPE) Programs, which was jointly approved by the American Institute of Certified Public Accountants and the National Association of State Boards of Accountancy. For example, the Statement says, “Writers of published articles, books, or CPE

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programs should receive CPE credit for their research and writing time to the extent it maintains or improves their professional competence.” It describes “writing articles, books, or CPE programs for publication” as “a structured activity that involves a process of learning” and requires that the writing be formally reviewed by an independent party. The Statement does not place limits on the amount of continuing professional education from instructing or writing that can be considered in determining whether a person has met the continuing professional education requirement.

40. The Statement was developed over a five-year period and released in 2000. Although it has been jointly reviewed since then, its basic principles have not been changed.]

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**CHAPTER 22
BOARD OF ACCOUNTANCY REGULATIONS**

18VAC5-22-10. Definitions.

The definitions in § 54.1-4400 of the Code of Virginia apply to these regulations.

[Observation: As explained in the observation to 18VAC5-21-10 of the current regulations, the Board believes the glossary provided by § 54.1-4400 is sufficient.]

18VAC5-22-20. Fees.

A. The Board, which § 54.1-4400 of the Code of Virginia defines as the Virginia Board of Accountancy, shall charge the following fees for services it provides:

- Processing an application to take the CPA examination \$ 120
- Processing an application for issuance of a Virginia license 24
- Processing an application for the timely renewal of a Virginia license 24
- Additional fee for processing an application for a license renewal that is not timely 25
- Processing an application for reinstatement of a Virginia license 250
- Processing an application for lifting the suspension of the privilege of using the CPA title in Virginia or for lifting the suspension of the privilege of providing attest services or compilation services for persons or entities located in Virginia 250
- Providing an additional CPA wall certificate 25
- Additional fee for not using the online payment option for any service provided by the Board 5

B. All fees for services the Board provides are due when the service is requested and are nonrefundable.

[Observation: As explained in the observation about 18VAC5-21-20 of the current regulations, this proposed regulation is substantially the same. Revisions were necessary to conform with the

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language of the revised statutes and to eliminate unnecessary parts of 18VAC5-21-20. However, the fee amounts are the same.]

18VAC5-22-30. Determining whether persons or entities to whom communications are made, or for whom services are provided, are located in Virginia.

For the purpose of complying with Chapter 44 (§ 54.1-4400 et seq.) of Title 54.1 of the Code of Virginia for communication to persons or entities located in Virginia or providing services for persons or entities located in Virginia, persons are considered to be located in Virginia if their primary residence for federal income tax reporting is located in Virginia, and entities are considered to be located in Virginia if they conduct any activities in Virginia.

[Observation: The notion of being located in Virginia is new and appears in different parts of the revised statutes. For example:

- a. Subsection A of § 54.1-4409.1 says that a person must be licensed in order to use the CPA title in Virginia, which § 54.1-4400 generally defines as any form or manner of communication to persons or entities located in Virginia.*
- b. Subsection A of § 54.1-4412.1 says that only a firm can provide attest services or compilation services to persons or entities located in Virginia.*

Providing requirements for determining whether a person or entity is located in Virginia is difficult. For example:

- a. Many people have more than one residence, and some use a post office box as their mailing address.*
- b. A business may have its headquarters in one state and a subsidiary in another state. The business may have financial statement and income tax services provided for the combined financial results or for the separate entities. If services are provided only for the combined financial results, procedures may still need to be performed for the subsidiary.*
- c. Some businesses are virtual organizations where all transactions are electronic, customer financing is not provided, and all services are outsourced.*

Therefore, in developing the proposed new regulation, the Board used a practical solution that it believes will best protect the public. Under the proposed 18VAC5-22-30, a person is considered to be located in Virginia if his primary residence for federal income tax reporting is located in Virginia, and an entity is considered to be located in Virginia if it conducts any activities in Virginia.]

18VAC5-22-40. Determining whether a person who holds a Virginia license is providing services to the public using the CPA title or to an employer using the CPA title.

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For the purpose of determining whether a person who holds a Virginia license is providing services to the public using the CPA title or to an employer using the CPA title, as those terms are defined in § 54.1-4400 of the Code of Virginia, because of the written information readily available to the public through the Board’s Internet postings, holding a Virginia license constitutes using the CPA title. Accordingly, a person who holds a Virginia license—

1. is providing services to the public using the CPA title if he provides services that are subject to the guidance of the standard-setting authorities listed in the standards of conduct and practice in subdivisions 5 and 6 of § 54.1-4413.3.
2. is providing services to an employer using the CPA title if he provides to an entity services that require the substantial use of accounting, financial, tax, or other skills that are relevant, as determined by the Board.

[Observation: As discussed in paragraphs 18 and 19 of the analysis of proposed changes to 18VAC5-21-170, this proposed regulation was primarily designed to clarify that whether the holder of a Virginia license is subject to the continuing professional education requirement depends on whether he provides services, rather than whether he tells the person or entity for whom he provides the services that he is a CPA.

However, the clarification has broader application than the continuing professional education requirements and accordingly is being proposed as a separate regulation. Two illustrations of the broader application follow. Both illustrations show how the guidance in the proposed 18VAC5-22-40 would be applied in determining whether the holder of a Virginia license must comply with the standards of conduct and practice in § 54.1-4413.3. That section requires persons using the CPA title in Virginia to comply with the standards.

- a. *The description of services in subdivision 1 of the proposed 18VAC5-22-40—services that are subject to the guidance of the standard-setting authorities listed in the standards of conduct and practice in subdivisions 5 and 6 of § 54.1-4413.3—is the description of the services in the definition of “providing services to the public using the CPA title” in § 54.1-4400. The proposed 18VAC5-22-40 clarifies that a person who holds a Virginia license could not avoid the requirement of subdivision 5 of § 54.1-4413.3 to comply with Statements on Standards for Tax Services and interpretive guidance when preparing income tax returns by not telling the persons and entities for whom he provides those services that he is a CPA.*
- b. *The description of services in subdivision 2 of the proposed 18VAC5-22-40— services provided to an entity that require the substantial use of accounting, financial, tax, or other skills that are relevant, as determined by the Board—is the description of services in the definition of “providing services to an employer using the CPA title” in § 54.1-4400. The proposed 18VAC5-22-40 clarifies that a person who holds a Virginia license and serves as the chief financial officer of an entity could not avoid the requirement of*

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subdivision 4 of § 54.1-4413.3 to comply with the Code of Professional Conduct and the related interpretive guidance by not telling the entity that he is a CPA. For example, the person could not avoid complying with the following part of Article IV of the Code of Professional Conduct:

Although members not in public practice cannot maintain the appearance of independence, they nevertheless have the responsibility to maintain objectivity in rendering professional services. Members employed by others to prepare financial statements or to perform auditing, tax, or consulting services are charged with the same responsibility for objectivity as members in public practice and must be scrupulous in their application of generally accepted accounting principles and candid in all their dealings with members in public practice.]

18VAC5-22-50. Determining whether the principal place of business of a person using the CPA title, or of a firm, is in Virginia.

Complying with subdivision A 1 of § 54.1-4409.1, subsection B of § 54.1-4411, or subsection B of § 54.1-4412.1 of the Code of Virginia requires the person or firm to use reasonable judgment in determining whether Virginia is the principal place of business in which the person provides services to the public using the CPA title or the firm provides attest services or compilation services. The determination shall be reasonable considering the facts and circumstances and can be based on quantitative or qualitative assessments. The determination shall be reconsidered for changes in facts and circumstances that are not temporary.

[Observation: The notion of principal place of business appears in different parts of the revised statutes. For example:

- a. Subdivision A 1 of § 54.1-4409.1 says a person must hold a Virginia license if he provides services to the public using the CPA title and the principal place of business in which he provides those services is in Virginia.*
- b. Subsection B of § 54.1-4412.1 says that a firm that provides attest services or compilation services to persons or entities located in Virginia shall obtain a Virginia license if the principal place of business in which it provides those services is in Virginia.*

The revised statutes do not require a person or firm to determine where the principal place of business is, only whether it is in Virginia. It is possible that a business is so spread out that there is no principal place of business. The proposed 18VAC5-22-50 therefore provides requirements for how to determine whether the principal place of business is in Virginia.

Providing requirements for this determination is complex. For example, should it be based solely on sources of revenues, number of clients, or some combination? Should the determination change if the client base changes? In the proposed new regulation, the Board

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used a practical solution that it believes best protects the public. The requirement prescribed by the proposed 18VAC5-22-40 is necessarily broad, generally requiring the use of judgment to make a determination that is reasonable considering the facts and circumstances and can be based on quantitative or qualitative assessments. However, a person who holds the license of another state, concludes that his principal place is not in Virginia, and provides services to persons or entities located in Virginia is still subject to the statutes and regulations as a result of the substantial equivalency provisions of § 54.1-4411.]

18VAC5-22-60. Determining whether a college or university is an accredited institution.

- A. For the purpose of complying with subdivision A 1 a of § 54.1-4409.2 of the Code of Virginia, a college or university that is not accredited by one of the six major regional accrediting organizations listed in the definition of “accredited institution” in § 54.1-4400 of the Code of Virginia or their successors shall be considered an accredited institution if it is accredited by an accrediting organization recognized by The Council on Higher Education Accreditation (CHEA) or its successor. Publication of the name of the accrediting organization by CHEA or its successor shall be sufficient notification that the accrediting organization is recognized by CHEA or its successor.
- B. To determine whether a college or university is an accredited institution if it is accredited by an accrediting organization that is neither one of the six major regional accrediting organizations or their successors, nor an accrediting organization recognized by CHEA or its successor, representatives of the accrediting organization shall meet with a task force appointed by the Board to study and recommend to the Board how the organization shall demonstrate that its accreditation process and standards are substantially equivalent to the accreditation process and standards of the six major regional accrediting organizations or their successors. The size and composition of the task force shall depend on the facts and circumstances. However, at least one of the members of the task force shall have substantial experience with the accreditation process and standards of the six major regional accrediting organizations or their successors.

After the task force provides its recommendations to the Board, the Board shall decide what the requirements shall be to demonstrate that the accreditation process and standards of the accrediting organization are substantially equivalent to the accreditation process and standards of the six major regional accrediting organizations or their successors and shall communicate its decision to the organization. The organization shall then provide the required documentation to the Board that will enable the Board to decide whether a college or university accredited by the organization is an accredited institution as defined in § 54.1-4400 of the Code of Virginia.

[Observation: The current regulations, in 18VAC5-21-10, define “accredited institution” generally as a college or university accredited by one of the six major regional accrediting organizations. One of the 2007 revisions to the statutes was to define “accredited institution” but in a broader way than the definition in the current regulations. Subdivision A 1 a of § 54.1-

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4409.2 generally requires that a person who has not been licensed must have obtained from one or more accredited institutions at least 150 semester hours of education, a baccalaureate or higher degree, and an accounting concentration or equivalent in order to obtain a Virginia license. Under the definition in § 54.1-4400, a college or university can be considered to be an accredited institution if either—

- a. it is accredited by one of the six major regional accrediting organizations, or*
- b. it is accredited by an accrediting organization demonstrating to the Board that its accreditation process and standards are substantially equivalent to the accreditation process and standards of the six major regional accrediting organizations.*

The proposed regulation provides requirements for how an accrediting organization can demonstrate substantial equivalence to the accreditation process and standards of the six major accrediting organizations. The requirements are provided in two levels.

- a. Recognition of the accrediting organization by The Council on Higher Education Accreditation (CHEA) is sufficient evidence of substantial equivalence, and publication of the name by CHEA is sufficient notification.*
- b. The second level provides a way for a college or university that is accredited by an accrediting organization that is not one of the six major regional accrediting organizations or recognized by CHEA to be considered an accredited institution. Under the proposed regulation, the Board would appoint a task force to study and recommend to the Board how the accrediting organization shall demonstrate substantial equivalence. The size and composition of the task force would depend on the facts and circumstances, but at least one of the members would have substantial experience with the accreditation process and standards of the six major regional accrediting organizations. After the task force provides its recommendations to the Board, the Board shall decide what the requirements shall be to demonstrate that the accreditation process and standards of the accrediting organization are substantially equivalent and shall communicate its decision to the organization.]*

18VAC5-22-70. Education.

- A. In order for a person to take the CPA examination through Virginia, he must have obtained from one or more accredited institutions or from the National College at least 120 semester hours of education, a baccalaureate or higher degree, and an accounting concentration or equivalent prior to taking any part of the CPA examination.
- B. For the purpose of complying with subsection A of this section and with subdivision A 1 a of § 54.1-4409.2 of the Code of Virginia, obtaining an accounting concentration or equivalent requires obtaining at a minimum:

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1. 24 semester hours of accounting courses, including courses in auditing, financial accounting, management accounting, and taxation; and
2. 24 semester hours of business courses, no more than six semester hours of which could be considered accounting courses.

Principles or introductory accounting courses cannot be considered in determining whether a person has obtained the 48 minimum number of semester hours required for an accounting concentration or equivalent.

[Observation: The proposed 18VAC5-22-70 is the same as the emergency regulation that became effective May 14, 2009, except that, as explained in the observation to subsection B of 18VAC5-21-30—

- a. subsections A and B of the proposed 18VAC5-22-70 appear as subdivisions 1 and 2 in subsection B of 18VAC5-21-30, and*
- b. subdivisions B 1 and B 2 of the proposed 18VAC5-22-70 appear as subdivisions 2 a and 2 b in 18VAC5-21-30.]*

18VAC5-22-80. Examination.

- A. In order to comply with subdivision A 1 b of § 54.1-4409.2 of the Code of Virginia:
 1. Each section of the CPA examination must be passed by attaining a uniform passing grade established through a psychometrically acceptable standard-setting procedure approved by the Board.
 2. Persons may take sections of the CPA examination in any order.
 3. A person who fails a section of the CPA examination may not retake that section until the next quarter of the calendar year.
 4. When a person first passes a section of the CPA examination, he has 18 months to pass the remaining sections. If the remaining sections are not passed within the 18-month period, the person loses credit for the first section passed, and a new 18-month period starts with the next section passed.
- B. Failure to comply with the policies established by the Board for conduct at the CPA examination may result in the loss of eligibility to take the CPA examination or credit for sections of the CPA examination passed. Cheating by a person in connection with the CPA examination shall invalidate any grade earned on any section of the CPA examination and may warrant expulsion from the CPA examination site and

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disqualification from taking the CPA examination for a specified period of time as determined by the Board.

- C. The Board may postpone scheduled CPA examinations, the release of grades, or the issuance of licenses under the following circumstances:
1. A breach of CPA examination security;
 2. Unauthorized acquisition or disclosure of the contents of a CPA examination;
 3. Suspected or actual negligence, errors, omissions, or irregularities in conducting a CPA examination; or
 4. Any other reasonable circumstances.
- D. Prior to being considered for a Virginia license, a person shall pass an ethics examination approved by the Board.

[Observation: In drafting the proposed 18VAC5-22-80, the Board generally retained some of the requirements of subsection C of 18VAC5-21-30 of the current regulations but updated and simplified the wording. In addition—

- a. The definition of “CPA examination” in § 54.1-4400 was written so that it would remain evergreen and providing detail in the regulations would be unnecessary.*
- b. Some parts of subsection C of 18VAC5-21-30 of the current regulations were time-sensitive and are no longer necessary.*

The observation to subsection C of 18VAC5-21-30 provides a detailed comparison of its requirements with those of the proposed 18VAC5-22-80.]

18VAC5-22-90. Continuing professional education.

- A. If during the current calendar year a person who holds a Virginia license provided services to the public using the CPA title, he shall have obtained at least 120 hours of continuing professional education during the three-calendar-year period ending with the current calendar year. For each of the calendar years in that period, he shall have obtained at least 20 hours of continuing professional education, including an ethics course of at least two hours.
1. If the person also holds the license of another state and Virginia is not the principal place of business in which he provides services to the public using the CPA title, the ethics course taken to comply with this subsection either shall conform with the

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requirements prescribed by the Board or shall be an ethics course acceptable to the board of accountancy of another state in which the person holds a license.

2. Otherwise, the ethics course shall conform with the requirements prescribed by the Board.
- B. If during the current calendar year a person who holds a Virginia license provided services to an employer using the CPA title and did not provide services to the public using the CPA title, he shall have obtained a minimum number of hours of continuing professional education determined as follows:
1. If the current calendar year is 2009 or 2010, the person shall have obtained at least 90 hours of continuing professional education during the three-calendar-year period ending with the current calendar year. For each of the calendar years in that period, he shall have obtained at least 15 hours of continuing professional education, including an ethics course of at least two hours.
 2. If the current calendar year is 2011 or later, the person shall have obtained at least 120 hours of continuing professional education during the three-calendar-year period ending with the current calendar year. For each of the calendar years in that period, he shall have obtained at least 20 hours of continuing professional education, including an ethics course of at least two hours.

The ethics course taken to comply with this subsection either shall conform with the requirements prescribed by the Board or shall be an ethics course acceptable to the board of accountancy of another state in which the person holds a license.

- C. If during the current calendar year a person who holds a Virginia license provided services to the public using the CPA title or to an employer using the CPA title and did not hold a Virginia license or the license of another state during one or both of the two preceding calendar years, he shall determine whether he has complied with the requirements of subsection A or B of this section as follows:
1. If the person became licensed during the current calendar year, he shall be considered to have met the requirements of the subsection for the three-calendar-year period ending with the current calendar year.
 2. If the person became licensed during the preceding calendar year, he shall be considered to have met the requirements of the subsection for the three-calendar-year period ending with the current calendar year if during the current calendar year he obtained at least the minimum number of hours of continuing professional education required by the subsection for the current calendar year, including an ethics course of at least two hours.

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3. If the person became licensed during the calendar year prior to the preceding calendar year, he shall be considered to have met the requirements of the subsection for the three-calendar-year period ending with the current calendar year if during the current calendar year and the preceding calendar year he obtained at least the minimum number of hours of continuing professional education required by the subsection for each of the years, including for each year an ethics course of at least two hours.

D. If during the current calendar year a person who holds a Virginia license did not provide services to the public using the CPA title or to an employer using the CPA title, he is not required to have obtained continuing professional education during the three-calendar-year period ending with the current calendar year. However, in order to begin providing those services—

1. He is required to have obtained at least 120 hours of continuing professional education prior to providing the services, including an ethics course of at least two hours.
2. The ethics course shall conform with the requirements prescribed by the Board for the calendar year in which the person begins providing the services.

Continuing professional education obtained during the three calendar years prior to the current calendar year and from the start of the current calendar year to when he begins providing the services shall be considered in determining whether the person has complied with the requirements of this subsection.

E. If a person who has not held the license of any state applies for a Virginia license after the end of the calendar year in which he passes the CPA examination, he shall obtain continuing professional education prior to applying for the license, including an ethics course of at least two hours.

1. The required minimum number of hours of continuing professional education shall be 40, 80, or 120 depending on whether he applies for the Virginia license by the end of the first calendar year after the calendar year in which he passes the CPA examination, by the end of the second calendar year, or later.
2. The ethics course shall conform with the requirements prescribed by the Board for the calendar year in which the person applies for the license.

Continuing professional education obtained subsequent to passing the CPA examination but during the three calendar years prior to the calendar year in which the person applies for the license and from the start of that calendar year to when he applies for the license shall be considered in determining whether he has complied with this requirement.

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- F. Continuing professional education acceptable to the Board may be obtained through a variety of forums, provided there is a means of demonstrating that the education was obtained. The following forums are acceptable:
1. Attendance at seminars and educational conferences, provided that the instructors have appropriate knowledge of the subject matter and use appropriate teaching materials and that attendance is monitored in a manner that can be verified by the Board;
 2. Taking courses at an accredited institution for credit;
 3. Self-study courses, provided there is a method for determining that the person met the learning objectives;
 4. Making a presentation at a professional seminar, educational conference, or in a classroom setting, provided the person has appropriate knowledge of the subject matter and uses appropriate teaching materials; and
 5. Writing material that is relevant to providing services to an employer using the CPA title or to the public using the CPA title, that is formally reviewed by an independent party, and that is published in a book, magazine, or similar publication that is used by persons who provide services to the public using the CPA title or to an employer using the CPA title.

Whether other forums are acceptable shall be determined by the Board on a case-by-case basis.

- G. In determining whether a person has obtained the required number of hours of continuing professional education:
1. Repeat presentations shall not be considered.
 2. No more than 30 hours from preparing for and making presentations shall be considered during each three-calendar-year period.
 3. One semester-hour of credit for courses at an accredited institution constitutes 15 hours of continuing professional education, and one quarter-hour of credit constitutes 10 hours of continuing professional education.
- H. Depending on the facts and circumstances, the Board may waive all or part of the continuing professional education requirement for one or more calendar years or grant additional time for complying with the continuing professional education requirement, provided that the waiver or deferral is in the public interest.

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[Observation: The analysis of proposed changes to 18VAC5-21-170 provides a detailed comparison of its continuing professional education requirements and those in the proposed 18VAC5-22-90.]

18VAC5-22-100. Experience.

Prior to applying for a license, a person must have been employed in academia, a firm, government, or industry in any capacity involving the substantial use of accounting, financial, tax, or other skills that are relevant, as determined by the Board, to providing services to the public using the CPA title or to an employer using the CPA title for a period that is the full-time equivalent of one year. Whether other skills are relevant shall be determined by the Board on a case-by-case basis. Self-employment does not meet the definition of “experience” in § 54.1-4400 of the Code of Virginia.

[Observation: The observation to subsection D of 18VAC5-21-30 provides a detailed comparison of its experience requirements with those in the proposed 18VAC5-22-100.]

18VAC5-22-110. Demonstrating that a person’s education, CPA examination, and experience are substantially equivalent to the requirements for obtaining a Virginia license.

Subdivision A 2 of § 54.1-4411 of the Code of Virginia does not require the person to notify the Board that the person’s education, CPA examination, and experience are substantially equivalent to the requirements for obtaining a Virginia license.

[Observation: Subsection A of § 54.1-4411, which was added to the statutes by the 2007 revisions, prescribes the two ways a person licensed in another state can be considered to have met requirements that are substantially equivalent to those prescribed by the Board. The second of those two is that the person has demonstrated meeting education, CPA examination, and experience requirements that are substantially equivalent to those prescribed by the Board.

The notion of a person demonstrating that his education, CPA examination, and experience are substantially equivalent was added to the statutes through the 2007 revisions. It was intended that the person would not be required to notify the Board that his education, CPA examination, and experience are substantially equivalent to the requirements for obtaining a Virginia license. The proposed 18VAC5-22-110 makes that intention clear. However, subsection A of the proposed 18VAC5-22-170, which is entitled “Communication between the Board and licensees,” would require the person to support his conclusion if requested by the Board.]

18VAC5-22-120. Supervision of firm personnel.

To comply with subdivision C 2 of § 54.1-4412.1 of the Code of Virginia, a person’s work must be planned, supervised, and reviewed by a person who either (i) holds a Virginia license or (ii) holds the license of another state and complies with the substantial equivalency provisions of § 54.1-4411 of the Code of Virginia.

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[Observation: Subsection C of § 54.1-4412.1 says that a firm that is not required to have a Virginia license may provide attest services or compilation services to persons or entities located in Virginia if the firm’s personnel working on the engagement are generally either licensed or under the supervision of a person who either—

- a. holds a Virginia license or*
- b. holds the license of another state and complies with the substantial equivalency provisions of § 54.1-4411.*

The supervision notion was added to the statutes by the 2007 revisions and was intended to encompass not just supervision but also planning and review. The proposed 18VAC5-22-120 makes that intention clear.]

18VAC5-22-130. Owners of firms who are not licensees.

To comply with subdivision D 2 of § 54.1-4412.1 of the Code of Virginia, owners of a firm who are not licensees must be persons who, based on the facts and circumstances, participate in the firm’s activities on a regular, continuous, and substantial basis.

[Observation: Subdivision D 2 of § 54.1-4412.1, which was added to the statutes through the 2007 revisions, says the Board shall prescribe requirements concerning the hours that owners who are not licensees work in a firm and may prescribe other requirements for those persons. The current regulations, in subdivisions B 2 and C 2 of 18VAC5-21-60, prescribe a minimum number of hours those persons must work annually for the firm.

The Board believes practice has changed so that prescribing a minimum number of hours is no longer effective in protecting the public. The intention of subdivision D 2 of § 54.1-4412.1 is to prevent control of firms by passive investors. The proposed 18VAC5-22-130 makes that intention clear, generally saying that owners who are not licensees must participate in the firm’s activities on a regular, continuous, and substantial basis. That language is patterned after the Internal Revenue Service guidance on determining whether an individual is a passive investor.]

18VAC5-22-140. Persons who release or authorize the release of reports.

- A. To comply with subdivision D 4 of § 54.1-4412.1 of the Code of Virginia, a person who releases or authorizes the release of reports on attest services or compilation services provided for persons or entities located in Virginia shall annually obtain a minimum of eight hours of continuing professional education related to attest services or compilation services. The hours obtained to meet this requirement shall be considered in determining whether the person has complied with the requirements of 18VAC5-22-90.

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- B. Firms providing attest services or compilation services shall establish policies and procedures to provide the firm with reasonable assurance that persons who release or authorize the release of reports on attest services or compilation services possess the kinds of competencies that are appropriate given the facts and circumstances. These policies and procedures shall address the required technical proficiency, familiarity with the industry and the person or entity, skills that indicate sound professional judgment, and other competencies necessary under the circumstances.

[Observation: Subdivision D 4 of § 54.1-4412.1, which was added in the 2007 revisions, says a person who releases or authorizes the release of reports on attest services or compilation services shall meet any additional requirements the Board prescribes. The current regulations, in subdivision B 2 of 18VAC5-21-50, generally impose an experience requirement on those persons that is based on a minimum number of hours.

The Board believes practice has changed so that prescribing a minimum number of hours is no longer effective in protecting the public. For example, the 600 minimum number of hours required by the current regulations may be sufficient for releasing or authorizing the release of reports on attest services for less complex engagements but would likely not be sufficient for other attest service engagements.

The overriding objective of subdivision D 4 of § 54.1-4412.1 is to require that a firm have procedures in place to ensure that persons who release or authorize the release of reports have the kinds of competencies that are appropriate for the engagement. The Board therefore drafted the proposed 18VAC5-22-140 to require that a firm establish policies and procedures to provide it with reasonable assurance that persons who release or authorize the release of reports on attest services or compilation services possess the kinds of competencies that are appropriate given the facts and circumstances and to prescribe what these policies and procedures should address. The language is patterned after quality control standards established by the American Institute of Certified Public Accountants. (As an observation, those standards are covered by subdivision 5 of § 54.1-4413.3.)

The Board also believes that the public is better protected if these persons obtain at least eight hours each year of continuing professional education related to attest services or compilation services. Subsection A of the proposed 18VAC5-22-140 therefore prescribes that requirement and notes that these hours shall be considered in determining whether the person has complied with the requirements for continuing professional education in the proposed 18VAC5-22-90. The proposed requirement therefore does not increase the number of hours of continuing professional education required.]

18VAC5-22-150. Monitoring program and peer review.

In order to comply with subdivision D 6 of § 54.1-4412.1 of the Code of Virginia, a firm shall comply with all components of the monitoring program in which it is enrolled, except

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that, depending on the facts and circumstances, the Board may waive the requirement for a peer review or grant additional time for complying with the requirement.

[Observation: Subdivision D 6 of § 54.1-4412.1, which was added in the 2007 revisions, requires a firm to be enrolled in the applicable monitoring program of the American Institute of Certified Public Accountants or another monitoring program for attest services and compilation services that is approved by the Board, and to comply with any requirements prescribed by the Board in response to the results of peer reviews. Section 54.1-4400 generally defines “peer review” as a review of a firm’s attest services and compilation services conducted in accordance with the applicable monitoring program of the American Institute of Certified Public Accountants or with another monitoring program approved by the Board.

18VAC5-21-70 of the current regulations is devoted to peer review, but changes in national peer review requirements have made much of its requirements out-of-date. Because the 2007 revisions to the statutes define “peer review” in § 54.1-4400 in a way that makes it evergreen, the Board believes the regulations should only address three aspects of peer review.

- a. The first two are addressed by the proposed 18VAC5-22-150.
 - 1. The proposed regulation requires that the firm comply with all components of the monitoring program in which it is enrolled. That clarifies that the intention of subdivision D 6 of § 54.1-4412.1 is to require not just that the firm be enrolled in a monitoring program but that it also comply with all components of the monitoring program.*
 - 2. The proposed regulation also gives the Board the latitude to waive the requirement for a peer review or grant additional time for complying with the peer review requirement.**
- b. The third aspect is addressed in subdivision A 2 of the proposed 18VAC5-22-170, which is entitled “Communication between the Board and licensees” and requires that, when requested by the Board, firms must provide proof of enrollment in a monitoring program and copies of reports and other documentation related to acceptance of their peer reviews.]*

18VAC5-22-160. Confidential consent agreements.

To determine whether to enter into a confidential consent agreement under subsection A of § 54.1-4413.5 of the Code of Virginia, the Board shall consider a violation minor if the Board believes that the violation was not intentional misconduct, was not the result of gross negligence, and did not have a significant financial impact on persons or entities. The Board shall enter into no more than two additional confidential consent agreements with a person or firm within ten years after the first confidential consent agreement.

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[Observation: Section 54.1-4413.5 was added to the statutes in the 2007 revisions to authorize the Board to enter into a confidential consent agreement with a person or firm in lieu of disciplinary action. Subsection C of § 54.1-4413.5 says the Board shall adopt regulations to implement the provisions of the section. The Board drafted the proposed 18VAC5-22-160 in response. Section 54.1-4413.5 limits confidential consent agreements to minor violations, and the proposed regulation says the Board shall consider a violation minor if the Board believes the violation was not intentional misconduct, was not the result of gross negligence, and did not have a significant financial impact on persons or entities. The proposed regulation also limits the number of confidential consent agreements for a person or firm to no more than two additional agreements within ten years after the first confidential consent agreement.]

18VAC5-22-170. Communication between the Board and licensees.

A. When requested by the Board:

1. Persons or firms applying for the issuance, renewal, or reinstatement of a Virginia license or for lifting the suspension of the privilege of using the CPA title in Virginia or providing attest services or compilation services for persons or entities located in Virginia shall provide the Board with support for their conclusion that they have complied with applicable provisions of Chapter 44 (§ 54.1-4400 et seq.) of Title 54.1 of the Code of Virginia and Board regulations.
2. Firms shall provide the Board with proof of enrollment in a monitoring program and copies of reports and other documentation related to acceptance of their peer reviews.
3. Persons or firms shall provide the Board documents related to the Board's investigation of their possible violation of provisions of Chapter 44 (§ 54.1-4400 et seq.) of Title 54.1 of the Code of Virginia or Board regulations.

Each person or firm shall respond within 30 calendar days to any request for information by the Board under this subsection.

- B.** Each holder of a Virginia license shall notify the Board in writing within 30 calendar days of any change in the holder's name or in the postal and electronic addresses where the person or firm may be reached.
- C.** The Board shall transmit license renewal notices electronically unless a person or firm is unable to communicate electronically. However, § 54.1-4413.2 of the Code of Virginia places the responsibility for renewing a Virginia license on its holder, and that responsibility is not affected by whether the holder receives a license renewal notice.

[Observation: A number of the current regulations require providing documentation when requested by the Board. Rather than prescribing each situation, the Board believes a more efficient and effective approach to protecting the public is to establish a general requirement in

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the proposed new regulations. Subsection A of the proposed 18VAC5-22-170 establishes three categories of requests for information that require compliance:

- a. Support for the conclusion that the person or firm has complied with the requirements of applicable statutes and regulations.*
- b. Proof of a firm’s enrollment in a monitoring program and copies of reports and other documentation related to acceptance of its peer review.*
- c. Documents related to the Board’s investigation of the possible violation by a person or firm of provisions of the statutes or regulations. This provision is similar to subsection F of 18VAC5-21-160, which applies to firms.*

The proposed regulation also requires holders of a Virginia license to notify the Board in writing within 30 calendar days of any change in the holder’s name or in the postal and electronic addresses where the person or firm may be reached. As discussed in the observation to subsection A of 18VAC5-21-110, this requirement is the same as the requirement in the current regulations.

The current regulations, in subsection D of 18VAC5-21-80, say that renewal notices will be mailed. At the time 18VAC5-21-80 was prescribed, electronic transmission was rare. However, electronic transmission is rapidly becoming the norm. The proposed regulation therefore establishes the presumption that renewal notices will be transmitted electronically unless a person is unable to communicate electronically.

Subsection D of 18VAC5-21-80 notes that “failure to receive written notice does not relieve the regulant of the requirement to renew and pay the required fee.” However, the 2007 revisions added in § 54.1-4413.2 requirements for the renewal and reinstatement of licenses and lifting the suspension of privileges. The proposed regulation therefore clarifies that the statutes place the responsibility for renewing a Virginia license on its holder and that responsibility is not affected by whether the holder receives a license renewal notice.]